S. HRG. 100-241

NOMINATION OF ROBERT M. GATES

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

NOMINATION OF ROBERT M. GATES, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

TUESDAY, FEBRUARY 17 AND WEDNESDAY, FEBRUARY 18, 1987

Printed for the use of the Select Committee on Intelligence

U.S. GOVERNMENT PRINTING OFFICE

70-566 WASHINGTON : 1987

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S421-1

SENATE SELECT COMMITTEE ON INTELLIGENCE

[Established by S. Res. 400, 94th Cong., 2d Sess.]

DAVID L. BOREN, Oklahoma, *Chairman*
WILLIAM S. COHEN, Maine, *Vice Chairman*

LLOYD BENTSEN, Texas
SAM NUNN, Georgia
ERNEST F. HOLLINGS, South Carolina
BILL BRADLEY, New Jersey
ALAN CRANSTON, California
DENNIS DECONCINI, Arizona
HOWARD M. METZENBAUM, Ohio

WILLIAM V. ROTH, JR., Delaware
ORRIN HATCH, Utah
FRANK MURKOWSKI, Alaska
ARLEN SPECTER, Pennsylvania
CHIC HECHT, Nevada
JOHN WARNER, Virginia

ROBERT C. BYRD, West Virginia, *Ex Officio*
ROBERT DOLE, Kansas, *Ex Officio*

SVEN E. HOLMES, *Staff Director and General Counsel*
JAMES H. DYKSTRA, *Minority Staff Director*
KATHLEEN P. MCGHEE, *Chief Clerk*

CONTENTS

	Page
Hearings held in Washington, DC:	
February 17, 1987	1
February 18, 1987	137
Statement of:	
Bentsen, Hon. Lloyd, a U.S. Senator from the State of Texas	19
Boren, Hon. David L., a U.S. Senator from the State of Oklahoma	1
Bradley, Hon. Bill, a U.S. Senator from the State of New Jersey	21
Cohen, Hon. William S., a U.S. Senator from the State of Maine	18
DeConcini, Hon. Dennis, a U.S. Senator from the State of Arizona	24
Durenberger, Hon. Dave, a U.S. Senator from the State of Minnesota	28
Gates, Robert M., nominee for Director of Central Intelligence	33
Hatch, Hon. Orrin, a U.S. Senator from the State of Utah	21
Hecht, Hon. Chic, a U.S. Senator from the State of Nevada	25
Hollings, Hon. Ernest F., a U.S. Senator from the State of South Carolina	20
Moynihan, Hon. Daniel P., a U.S. Senator from the State of New York	25
Murkowski, Hon. Frank, a U.S. Senator from the State of Alaska	58
Roth, Hon. William V., Jr., a U.S. Senator from the State of Delaware	20
Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania	23
Warner, Hon. John, a U.S. Senator from the State of Virginia	30
Supplemental materials, letters, etc.:	
Boren, Hon. David L., Chairman of the Select Committee on Intelligence and Hon. William Cohen, Vice Chairman of the Select Committee on Intelligence, letter to Robert M. Gates, February 12, 1987	11
Financial Disclosure Report	6
Gates, Robert M., letter to Hon. Dave Durenberger, Chairman, Select Committee on Intelligence, December 9, 1986	130
Testimony of Robert Gates to the Select Committee on Intelligence on Thursday, December 4, 1986	103
Martin, David H., Director, Office of Government Ethics, letter to Hon. David L. Boren, chairman, Select Committee on Intelligence, February 17, 1987	5
Procedures Governing Reporting to the Senate Select Committee on Intelligence (SSCI) on Covert Action	16
Addendum to procedures	17
Supplemental questionnaire	11

NOMINATION OF ROBERT M. GATES TO BE DIRECTOR OF CENTRAL INTELLIGENCE

TUESDAY, FEBRUARY 17, 1987

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to notice, at 10:10 a.m., in room SD-106, Dirksen Senate Office Building, Hon. David L. Boren (Chairman of the Committee) presiding.

Present: Senators Boren, Bentsen, Nunn, Hollings, Bradley, Cranston, DeConcini, Metzenbaum, Cohen, Roth, Hatch, Murkowski, Specter, Hecht, and Warner.

Staff Present: Sven Holmes, Staff Director and General Counsel; James Dykstra, Minority Staff Director; and Kathleen McGhee, Chief Clerk.

STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Chairman BOREN. The hearings will come to order. The hearings this morning of the Senate Select Committee on Intelligence are for the purpose of considering the nomination of Mr. Robert M. Gates to be the Director of the Central Intelligence Agency.

We open these important confirmation hearings this morning in a period of controversy and confusion about American foreign policy and its implementation. Our goal must be to learn constructive lessons from the mistakes which have been made.

The President has nominated Robert Gates, a career professional, to be the Director of Central Intelligence. Mr. Gates has compiled a very positive record during his public service, and has experience in key positions including work as an analyst, as Deputy Director for Intelligence, and then as Deputy Director of the Central Intelligence Agency.

It is my fervent hope that the confirmation process upon which we embark today will materially contribute to restoring coherence, bipartisanship and professionalism to American foreign policy and the intelligence gathering process which supports it.

My fellow Oklahoman, Daniel Boorstin, the historian said, we live in an age that often confuses information with knowledge. We are so overburdened with facts, that we fail to reflect upon their meaning. In cases such as the current crisis, we tend to focus upon the symptoms instead of grasping and coping with the underlying problems.

The current fiasco presents a picture of American foreign policy in disarray. It is a record of reliance upon private individuals, foreign nationals, and naive amateurs in the making of policy and a failure to seek the expertise available within our own Government.

These alarming developments are, however, merely a reflection of the underlying problem: the collapse of the concept of a bipartisan foreign policy. We are now witnessing the culmination of a process that began two decades ago when the Nation was split apart by the Vietnam War.

With alarming speed, bipartisanship in foreign policy continued to unravel further through the period of Watergate and later during our hesitant and uncertain reaction to the hostage crisis and other events. While party divisions widened, at the same time the partnership between the executive and legislative branches necessary for building a consensus in foreign policy fell apart. It has been replaced by a spiral of increasing hostility and distrust between the White House and Capitol Hill.

With each new breakdown of bipartisan consensus and trust comes a new list of congressional restrictions on the executive branch. With new restrictions come new initiatives by the White House aimed at evading what are viewed as unwise limitations upon the prerogatives of the Commander in Chief. Executive evasions breed more congressional distrust and the cycle continues, paralleling the arms race in its destructive and irrational escalation.

Nothing has done more to damage the reputation and standing of the United States around the world than the breakdown of a consensus on American foreign policy. The days of consensus-building among President Eisenhower and Democratic congressional leaders Rayburn and Johnson are only faded memories. America's allies around the world can no longer rely upon the continuity of American foreign policy. Instead, they are afraid to follow us for fear that we will suddenly change direction. The diplomatic representatives of foreign countries have learned the game of enhancing their interests by playing off Congress and the White House against each other.

We can no longer afford the luxury of uncertainty and the division that we now have when we confront the rest of the world. No longer is the United States able to dominate the world scene by itself as it did 40 years ago. Our influence and our power must be spent carefully. Cooperation of allies is essential.

Bipartisanship in foreign policy cannot be rebuilt by merely writing more rules and regulations. While clearer definition of some statutory terms may be in order, and that is something that this committee and others should certainly consider, no amount of rule making will solve the fundamental problem. Not even two very specific memoranda of understanding between the intelligence community and the Senate Oversight Committee prevented the current debacle.

Eisenhower, Rayburn, and Johnson did not meet to hammer out a bipartisan consensus on foreign policy because some rules and regulations required it. They did so because they realized that it did no good for a President to start a course of action unless there was a bipartisan consensus in Congress sufficient to sustain it.

They understood that a stop and start foreign policy would destroy the Nation's credibility.

Mutual trust must replace legislative approaches that are more appropriate to adversaries than they are to Americans with a common duty to the Nation.

Mutual trust can only be rebuilt through candor and legitimate compromise. Each branch of government must keep the confidence of the other when appropriate. This Committee with its recent tightening of its own internal rules for the safeguarding of sensitive information intends to fully meet its responsibilities in that area. We will have gained a great deal from the current crisis if from it, America learns to speak to the rest of the world with a single voice.

The Senate Select Committee on Intelligence meets today at an important time for the Central Intelligence Agency and the U.S. intelligence community. I strongly believe that our Nation's security depends upon effective intelligence gathering. At the same time, however, such activities must be conducted in a manner consistent with our laws and our democratic institutions.

As we begin our confirmation hearings, two special congressional committees and an independent counsel are investigating a covert action program that involved the CIA, as well as allegations of illegal or improper activities by U.S. Government officials, including officials of the Central Intelligence Agency.

Accordingly, in addition to our obligation to determine whether the individual nominated to serve as Director of the CIA is personally qualified—in terms of judgment, experience, character, leadership and vision—we must further assure that he is not otherwise precluded from serving due to any involvement in such illegal or alleged improper activities. This does not mean that this Committee will convert this confirmation process into a broad investigation of the entire Iranian arms program. To do so would not be proper because special investigating committees have been created by both the House and Senate for that purpose. Rather, this Committee is charged with compiling a clear and complete record of all of the information known to Mr. Gates regarding improper and possibly illegal activities and to assess his conduct during this critical period as well as during the rest of his professional career. Based upon this record this Committee must then render a determination with respect to his confirmation.

It is my hope that this process will be both comprehensive and constructive. As a result, I believe that two objectives will be served. First, the Committee will be able to meet its responsibility to the Nation and to the Senate to fully and carefully consider the qualifications of Mr. Gates to be Director of the Central Intelligence Agency, and, second, in the event that Mr. Gates is confirmed, a careful and thorough consideration of his entire record during this confirmation process will give him a stronger mandate to go forward to better address the important problems facing the Intelligence Community today, and to work to rebuild that spirit of mutual trust and bipartisanship which is badly needed. On that constructive spirit, we certainly welcome Mr. Gates to these hearings this morning.

I would like to enter into the record at this point for consideration by the Committee the background and financial disclosure statement filed by Mr. Gates with the Committee, pursuant to Committee rule 5.6, and also supplemental statements filed in response to eight additional questions posed by myself and the vice-chairman in a letter to Mr. Gates on February 12, 1987. I would also like to enter into the record at this point memoranda of understanding entered into by the then chairman of this Committee, Senator Goldwater, the Vice Chairman, Senator Moynihan, in June 1984, with Mr. Casey as Director of the Central Intelligence Agency, and then as modified by an additional document dated in June 1986 entered into between Mr. Casey and then Chairman, Mr. Durenberger and Vice Chairman Leahy. These agreed procedures amplify the requirements established in the Intelligence Oversight Act of 1980 and make clear the commitment on both sides to work within the framework of that act. The procedures were modified, as I mentioned, in June of last year, and specify even more clearly some of these reporting requirements. They discuss both the nature of initial reporting to the Committee on new covert action, and also the kind of reporting that is expected during ongoing covert action programs. And, so, I enter both of those memoranda of understanding and those accords between the Committee as historical documents to give some background and context for the hearings today. I would also mention that the Committee has taken action this morning to authorize the chairman to release an unclassified summary—or an unclassified text—of the December 4 testimony of Mr. Gates before the Select Committee on Intelligence that is now being prepared, and members of the Committee are given an opportunity to check the accuracy of any of their questions before it is released, but I have been authorized as chairman by the Committee to release that. That testimony will be placed in the record later this afternoon in the course of the hearings and made available to the public at that time.

[The documents referred to follow:]

United States
Office of Government Ethics
P O Box 14108
Washington, D C 20044

FEB 17 1987

Honorable David L. Boren
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Robert M. Gates, who has been nominated by President Reagan for the position of Director of Central Intelligence.

We have reviewed the report and have also obtained advice from the Central Intelligence Agency concerning any possible conflict in light of the Agency's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Gates is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin

David H. Martin
Director

Enclosure

SF 278 (Rev. 1-85)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3206-0062

Reporting Status (Check Appropriate Box)			Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent	☒ New Entrant, Nominee, or Candidate	☐ Termination Filer				

Reporting Individual's Name	Last Name: GATES	First Name and Middle Initial: Robert M.
Position for Which Filing	Title of Position: Director of Central Intelligence	Department or Agency (If Applicable): Central Intelligence Agency
Location of Present Office	Address (Number, Street, City, State and ZIP Code): Washington, D.C. 20505	Telephone No. (Include Area Code): (703) 482-6464
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: Deputy Director of Central Intelligence, CIA 4-18-86 to present Deputy Director for Intelligence, CIA 1-04-82 to 4-17-86	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Select Committee on Intelligence	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual: Robert M. Gates	Date (Month, Day, Year): February 5, 1987
Other Review (If desired by agency)	Signature of Other Reviewer:	Date (Month, Day, Year):
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations	Signature of Designated Agency Ethics Official/Reviewing Official: [illegible]	Date (Month, Day, Year): 14 February 1987
Office of Government Ethics Use Only RAF 2-17-87 MB 2/17/87	Signature: [illegible]	Date (Month, Day, Year): F.C 17, 1987

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side)

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

6

Reporting Individual's Name: Gates, Robert M.

Assets and Income

Page Number: 2

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. **Exclude** your personal residence unless you rent it out. See instructions for rules on "sunk accounts and complex holdings."

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A: Assets & Income Sources (Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐)	BLOCK B: Valuation of Assets — Category of Value (X): Prime (or less than $1001)	$1,001 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000	BLOCK C: Income — Type of Income (X): Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): Prime (or less than $101)	$101 $1,000	$1,001 $2,500	$2,501 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	BLOCK D: Transactions Test — If yes, complete Schd. B Part II for those assets (including those sold for a loss) YES	NO
S or DC	Examples: X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											...ploship income								$50,000			
1 S	Spouse Employment																										
2	(N. Va. Community College)																										
3	IRA (Bank Deposits)			X													X										
4	(Sovran Bank)																										
5 S	IRA (Bank Deposits)			X													X										
6	(Sovran Bank)																										
7	Savings Account			X													X										
8	(N.W. Federal Credit Union)																										
9																											
10																											

PREVIOUS EDITION USABLE

279-259

SF 278 (Rev. 1/85)
Part Chapter 736
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0057

Reporting Individual's Name

Gates, Robert M.

Page Number	3	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE [X]

S or DC	Example	Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000
	Example	X Y Z Common	X			2/1/83		X			
1											
2											
3											
4											
5											
6											

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude** transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), **exclude** gifts from relatives and **exclude** gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE [X]

S	Source (Name and Address)	Brief Description	Value
Example	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
Example	Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1			
2			
3			
4			

8

FPM Chapter 338
U.S. Office of Personal Management

Reporting Individual's Name
Gates, Robert M.

Page Number	4	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE [X]

		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
							$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC	Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1		Manufacturers Hanover Financial Services	2nd Trust - Home Improvement Loan	1983	13%	12		X			
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE [X]

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/75 ptnership agmnt

PREVIOUS EDITION USABLE

278 108

Reporting Individual's Name

Gates, Robert M.

Page Number	5	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE [X]

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE [X]

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC., February 12, 1987.

Mr. ROBERT M. GATES,
Acting Director of Central Intelligence, Central Intelligence Agency, Washington, DC.

DEAR MR. GATES: As you know, the Senate Select Committee on Intelligence has an important duty to consider your nomination as Director of Central Intelligence in a comprehensive manner. Indeed, it is our hope and belief that a thorough confirmation process will contribute to an open and positive relationship between the Congress and the Agency in the future.

At the same time, the Committee has an obligation to review your role in matters that are currently under investigation by two special Congressional committees, an independent counsel, and a Presidential panel. Clearly, a complete record in this regard not only will assist the Committee in considering your nomination as Director but also will assist you in moving forward in the event that you are confirmed by the U.S. Senate.

To help accomplish these goals, we are submitting herewith a supplement to the questionnaire that is normally completed by nominees considered by this Committee and which you have already answered. These additional questions are intended to provide a comprehensive record with respect to topics of special concern that are presented by these unique circumstances. We request that your sworn responses to these supplemental questions be provided to the Committee as soon as possible in order that they may be available prior to the date of your confirmation hearing. Of course, if portions of the responses are classified, such responses should be submitted separately.

Thank you for your cooperation.

Sincerely,

DAVID L. BOREN,
Chairman.

WILLIAM S. COHEN,
Vice Chairman.

QUESTIONNAIRE SUPPLEMENT

1. On what date did you first learn information, either directly or indirectly, regarding the proposed sale of arms to Iran, what was that information, and what actions did you take or advise upon learning such information?

2. Since the date set forth in your response to question number 1 above, state what information that you have subsequently learned, either directly or indirectly, regarding the sale of arms to Iran, state when you learned such information, describe such information and describe what actions you took or advised upon learning such information.

3. On what date did you first learn information, either directly or indirectly, regarding the transfer of intelligence to Iran, what was the information, and what actions did you take or advise upon learning such information?

4. Since the day set forth in your response to question number 3 above, state what information that you have subsequently learned, either directly or indirectly, regarding the transfer of intelligence to Iran, state when you learned such information, describe such information, and describe what actions you took or advised upon learning such information.

5. On what date did you first learn information, either directly or indirectly, suggesting that funds derived from the sale of arms to Iran possibly had been used to support the Nicaraguan resistance, what was that information, and what actions did you take or advise upon learning such information?

6. After the date set forth in your response to question number 5 above and prior to the Attorney General's announcement on November 25, 1986, state what information you learned, either directly or indirectly, suggesting that funds derived from the sale of arms to Iran possibly had been used to support the Nicaraguan resistance, describe that information, state when you learned such information and describe what actions you took or advised upon learning such information. In addition describe any such information that you learned subsequent to the Attorney General's announcement on November 25, 1986 which had been known to employees of the Central Intelligence Agency prior to such announcement, and describe what actions you took or advised upon learning such information.

7. Describe any information presently known to you, either directly or indirectly, concerning activities by U.S. officials that had the purpose or effect of providing illegal or unauthorized assistance to the Nicaraguan resistance during the period that such assistance was prohibited by law.

8. Describe any information presently known to you, either directly or indirectly, concerning any activities that you have reason to believe may be unlawful or contrary to Executive Order, which have not been reported to the Intelligence Oversight Board, or any activities which may involve violation of any federal criminal law which have not been reported to the Attorney General.

Question 1. On what date did you first learn information, either directly or indirectly, regarding the proposed sale of arms to Iran? What was that information and what action did you take, or advise, upon learning such information?

Answer. My first, partial involvement in the Iranian project began on 5 December 1985 when I was asked to attend a meeting in the office of the Deputy Director of Central Intelligence, John McMahon. I attended in my capacity as Deputy Director for Intelligence. There were representatives at the meeting from both the analytical and operational elements of the agency. According to notes taken by the DDCI's assistant, Mr. McMahon asked a series of substantive questions about factionalism in Iran, the Iran-Iraq military balance, Iranian tank strength, whether the Iranians were seeking spare parts to deal with Soviet bear aircraft purportedly flying along the Iran/Iraq border, and he asked for a biography of a senior Iranian military official. Those of us from the analytical side answered some of his questions on the spot and went back to him with answers on the rest either that afternoon or the next day. While we were still in the room, Mr. McMahon asked several questions of the operational officers present and there were references to a flight that had taken place a few days earlier, that there were to be other flights and some further discussion of flights. McMahon was told that a finding had been signed. I was unaware of the context, but this was the first indication I had that the U.S. was involved in some way in arrangements related to Iran.

Question 2. Since the date set forth in your response to question #1 above, state what information that you have subsequently learned, either directly or indirectly, regarding the sale of arms to Iran, state when you learned such information, describe such information, and describe what actions you took, or advised upon learning such information.

Answer. During early February, I saw a scenario paper from the NSC that laid out a proposed schedule for, in effect, the exchange of bona fides of the two sides—that is, the weapons and the hostages, which would then lead to a mission to Tehran and the opening of a strategic dialogue. The scenario provided, as I recall, that the entire enterprise would take place over a relatively short period of time. The schedule included the transfers of weapons but few operational details. The schedule was never met to the best of my knowledge.

At this point I basically lost touch with the project as I became involved in the confirmation process to become Deputy Director of Central Intelligence. I only recall being advised about the May McFarlane mission to Tehran and being briefed in general terms about what happened there. I was generally aware that TOW missiles and Hawk missile parts had been transferred to the Iranian side but I was not aware of the precise quantities involved. After the McFarlane meeting in Tehran in May, the project entered a quiescent phase. Apart from an occasional update on the state of negotiations with the Iranian side, my next involvement occurred on 1 October. I only became aware of the exact terms of the arms transfers—the quantity of missiles; their cost; our accounting procedures; and other specifics related to our support role—in mid-to late November as we tried to pull together a full account of our involvement and prepare congressional testimony.

Answer. [Response classified.]

Question 3. On what date did you first learn information, either directly or indirectly, regarding the transfer of intelligence to Iran, what was that information, and what actions did you take, or advise, upon learning such information.

Answer. I was disturbed by the threat to the security of the operation, as well as the speculation, and directed the NIO to brief the DCI. The NIO and I met with the DCI on 7 October, 1986, and the NIO repeated his worries about the project's operational security and the possibility that there might have been a diversion of some of the Iranian money. The DCI told him to draft a memorandum outlining his concern.

Question 4. Since the date set forth in your response to question #3 above, state what information that you have subsequently learned, either directly or indirectly, regarding the transfer of intelligence to Iran, state when you learned such informa-

tion, describe such information, and describe what actions you took, or advised, upon learning such information.

Answer. [Response classified.]

Question 5. On what date did you first learn information, either directly or indirectly, suggesting that funds derived from the sale of arms to Iran possibly had been used to support the Nicaraguan resistance, what was that information, and what actions did you take, or advise, upon learning such information?

Answer. On 1 October, our national Intelligence Officer for Counterterrorism met with me to express concern about the operational security of the NSC's Iran arms project. He said he had indications that investors had not been repaid for putting up the front money for part of the arms deal, and that there were confusing reports relating to claims by Tehran that it was overcharged for the parts.

The NIO also speculated that some of the funds from the Iranian arms sales may have gone to support the Contras. He told me he found worrisome the juxtaposition of reports of overcharging and his belief that some of the same private citizens were involved in both the Iranian project and Contra funding. At the same time, he said that he had no evidence of any diversion of funds or that CIA, NSC, the White House or the U.S. Government might be involved. Nor did he express a concern or belief that U.S. law might have been violated.

Question 6. After the date set forth in response to question #5 above, and prior to the Attorney General's announcement on November 25, 1986, state what information you learned, either directly or indirectly, suggesting that funds derived from the sale of arms to Iran possibly had been used to support the Nicaraguan resistance, describe that information, state when you learned such information, and describe what actions you took, or advised, upon learning such information.

In addition, describe any such information that you learned subsequent to the Attorney General's announcement on November 25, 1986, which had been known to employees of the Central Intelligence Agency prior to such announcement, and describe what actions you took, or advised, upon learning such information.

Answer. On 7 October, the same day as Allen's meeting with the DCI and me, the DCI received a telephone call from a New York businessman. The businessman knew about the financial aspects of the NSC project—in fact considerably more than the CIA knew—and wanted to express his concern about the security operation because of the unhappy investors. According to the memorandum of conversation prepared by the director, and contrary to recent press accounts, the businessman made no mention in this 7 October conversation about any possible diversion of funds. I was informed of the conversation soon after it took place.

On 9 October, the DCI and I met with Lt. Col. North to receive a briefing on his recent meeting with Iranians representing a new channel to senior officials in Tehran. Three subjects were discussed at the lunch—the recent meetings with the Iranians, the security of the project, and the downing of the private benefactor supply plane and capture of Eugene Hasenfus. The DCI expressed his concerns about the operational security of the Iran project, and there was, as I recall, considerable discussion about the change of Iranian channels and the unhappiness of private investors associated with the first channel. I told the Director in North's presence that he should insist on getting a copy of the 17 January finding and North said he would try to arrange it.

As I try to reconstruct the conversation, we then turned to Central America, the downing four days before of a Contra supply plane and capture of Mr. Hasenfus and his appearance in Managua two days before—on the 7th. But it was on the morning of the 9th—the day of the lunch with North—that Hasenfus said at a press conference that he worked with people he believed were CIA employees. There was a furor in the press and Congress about this, and many allegations and questions about CIA involvement. While we had assurances from our own people that they had kept their distance from the private benefactors, as a cross-check I asked Lt. Col. North at the lunch if there were any CIA involvement, direct or indirect, in the private funding effort on behalf of the Contras. He told us that "CIA is completely clean" of any contact with those organizing and funding the operation. Because of the allegation of CIA wrongdoing with the Contras, after lunch I made a record of his response. Two hours later, the Director and I came to the Capitol to assure the chairmen and vice chairmen of the two oversight committees that CIA had not been involved in the flight of the Contra plane.

In this context, I recall, that toward the end of the lunch Lt. Col. North made a cryptic remark about Swiss accounts and the Contras. Neither the DCI nor I pursued the comment. I was uneasy about the remark, however, and went back into the Director's office after lunch to see if he had understood what Lt. Col. North had

been saying and if we should be concerned by it. He either hadn't heard or picked up on the remark at all, or seemed unconcerned, so I did not pursue it further.

Now, a word of explanation is in order as to why I did not pursue Lt. Col. North's passing and cryptic remark at the end of lunch. First, I did not really understand what he was talking about. Second, I did not want to pursue the question of private funding for the Contras, not because I suspected a problem, but because of our overall concern not to cross the legal limits on us vis-a-vis the Contras and their private benefactors. During the period in question, CIA was authorized to provide very limited support to the Nicaraguan resistence. We knew, obviously, that private groups were providing support to the resistence and CIA probably could have learned about these activities and who was involved. However, we did not want to get as close to the private benefactors as would have been required to collect such information because we did not want to do anything that could be misinterpreted as a CIA violation of the statutory prohibitions. It was out of caution to avoid crossing the bounds of the permissible that CIA officers at all levels were urged to avoid involvement with matters concerning the private efforts to support the Contras.

Indeed, this cautious approach was spelled out explicitly in an early cable to the field soon after passage of the Boland amendment. It said: "We are going to be under very close scrutiny on this question and we must take every precaution to ensure that we are not in violation of Congressional prohibition either in fact or in spirit."

We received the NIO's memorandum laying out his thoughts on 14 October. All but one paragraph of the seven-page memorandum focused on the unhappy investors and risk to the security of the operation. It was in this context that the NIO observed that one of the intermediaries was unhappy about being left in the lurch by the change of channels for negotiations, and said that if the intermediary decided to go public, he might allege that profit from the arms transaction had been redistributed to "other projects of the U.S. and of Israel." This was an even more tentative and vague formulation about a possible diversion than when he originally briefed me, with no mention of the Contras this time.

I urged the director to get the memorandum to Admiral Poindexter as quickly as possible. We met with Poindexter the next day, on October 15. We gave him the memorandum and had him read it in our presence. He kept it. As I recall, the ensuing conversation focused on the security problem. We repeated our concern that the project was out of control and should be made public, the director suggested that the Admiral consult the White House counsel to ensure that all the NSC's activities were proper.

The same day as the meeting with Admiral Poindexter, 15 October, based on the NIO's memo, I called in the CIA general counsel and told him what I knew about the Iran affair, including concerns about operational security posed by unhappy investors, as well as the NIO's speculation about a possible diversion of Iranian money. I asked him to look into all of this, and to ensure that all of CIA's activities were legal and proper. He later advised that he found nothing improper in CIA's activities—a judgment that has been sustained.

I left on an overseas trip on 17 October and did not return until the 30th. It was during that time that the New York businessman met with the NIO and passed along the Iranian intermediary's belief that some of the money had been "earmarked for Central America." I did not learn of these follow-up conversations with the businesman until after the Attorney General's statement on 25 November, and to the best of my recollection I did not read even a summary of the memorandum reporting what was said until 3 December. In fact, my unfamiliarity with these late October conversations required a correction of the record of my 4 December Senate Select Committee testimony, specifically with respect to when the businessman said what. I believe that it was when I was travelling, perhaps after learning of the businessman's comments on a possible diversion, that the Director told Admiral Poindexter that Lt. Col. North should get counsel. I don't know whether he meant the White House counsel or private counsel.

The DCI and I met with Admiral Poindexter on 6 November at which time the DCI again urged the admiral to have White House counsel review the whole Iranian project. We continued to urge that a public accounting of the entire matter be made.

In summary, I would like to make three observations.

First, it has been alleged in the media that the DCI or I learned of a diversion of Iranian funds in early October. This is a vast overstatement . In terms of my personal role, before 25 November I was aware only of the NIO's speculation of 1 October and Lt. Col. North's cryptic reference of 9 October. There was no evidence at any time during this period of involvement by CIA, NSC, or U.S. Government offi-

cials, or any concern expressed about a possible violation of law. Nor was there any evidence, in fact, that any diversion had taken place.

At no point from 1 October to 25 November did I receive any further information about a possible diversion of funds. I regarded what little information I had as worrisome, but extraodinarily flimsy. Security concerns posed by unhappy investors and speculation about the funding involved financial aspects of the Iranian initiative arranged by the NSC and about which we knew very little. Therefore, we concluded that the appropriate thing to do was to bring these matters to the attention of Admiral Poindexter with a recommendation that the entire matter be reviewed by counsel. We felt that only they were in a position to evaluate and act on the information we had at the time. We not only passed all the information and speculation we had to Admiral Poindexter, but we had our own general counsel review the propriety of CIA's action, and repeatedly urged that White House counsel review the NSC's activities and that the entire initiative be made public. I believe that these were appropriate and proper actions, given what little we had to go on.

Second, while I do not want to trivialize these activities, it is important to place them in perspective. Lest it appear that the Iranian affair was the preoccupying issue on our minds during this period, let me point out that during the first two weeks in October both we and you were preoccupied with the downing of the private benefactor airplane in Nicaragua and the capture of Eugene Hasenfus. The Daniloff affair and associated expulsions culminated during this period. We also were deeply engaged in preparations for the President's meeting in Reykjavik. Nearly simultaneously, we had a political crisis underway in the Philippines, a phony Soviet withdrawal from Afghanistan, a major commitment of time and energy related to the British explusion of the Syrian Ambassador and Syria's involvement in terrorism, the flap over the false reports of Kim Il Sung's death, and a major preoccupation with the renewal of the authorized support for the Contra program on 1 October and the associated conflict along the Nicaraguan-Honduran border. We also were busy with the day-to-day management of CIA and the intelligence community. The brief conversations and speculation about a possible diversion of funds came in the midst of all these activities.

Third, I recognize my obligation by law to inform the oversight committees of any illegal intelligence activities. Yet, at no time in October and November—or in fact to this day, has any evidence or information been brought to me of any illegal intelligence activity in the Iran project. Indeed, several members of both oversight committees have told me they have seen no such evidence either. Informing the committees of general concerns relating to the Iran operation was precluded by the directive in the finding.

I also recognize my obligation to report to the Intelligence Oversight Board those intelligence activities conducted by the agency that I have reason to believe may be unlawful or contrary to executive order or Presidential directive. In addition, I will report possible violations of Federal criminal laws by employees and of specified criminal laws by any other person to the Attorney General according to the procedures we have agreed to follow. I considered in October and November—and even today—that it would have been irresponsible to report to these bodies the flimsy speculation of 1 October.

Question 7. Describe any information personally known to you, either directly or indirectly, concerning activities by U.S. officials that has the purpose or effect of providing illegal or unauthorized assistance to the Nicaraguan resistance during the period that such assistance was prohibited by law.

Answer. The only activities which I am aware of that may have had the purpose or effect of providing illegal or unauthorized assistance to the Nicaraguan resistance involve the actions of one of our officers in support of the Nicaraguan resistance during late 1985 and 1986.

On January 13th I informed the Chairman and Vice Chairman of this Committee of indications we had uncovered that this individual had violated agency policy—but not necessarily the law—governing our involvement with the Nicaraguan resistance.

On 22 January, I was informed by CIA's Inspector General that our officer may have misled us in earlier interviews and conversations regarding his activities. I telephoned the Chairman and Vice Chairman of the two oversight intelligence committees to inform them of this within an hour of being apprised myself.

Question 8. Describe any information personally known to you, either directly or indirectly, concerning any activities that you have reason to believe may be unlawful or contrary to Executive Order which have not been reported to the Intelligence Oversight Board or any activities which involve violation of any Federal criminal law which have not been reported to the Attorney General.

Answer. Aside from the one possible case of improper involvement with the Nicaraguan resistance that I have just mentioned, I am not aware of any activities conducted by the CIA which I have reason to believe are unlawful or contrary to executive order which have not been reported to the intelligence oversight board or to the Attorney General. The Inspector General and General Counsel report quarterly to the PIOB on intelligence activities that may be unlawful or contrary to executive order. Occasionally, ad hoc reports are forwarded to the IOB when we discover possible illegal or inappropriate actions that are committed by agency personnel. The general counsel has the added responsibility of reporting possible illegal acts to the Department of Justice as they occur. I believe we have carried out these reporting requirements expeditously and conscientiously.

This entire matter is subject to an ongoing investigation by CIA's Inspector General as well as several other investigative bodies. I have kept the Chairmen and Vice Chairmen of our Intelligence Oversight Committees apprised of the progress of our investigation and, of course, will continue to do so. I hope my actions in this unfortunate matter will be taken as an indication of my attitude toward the DCI's reporting obligations to the committees. I feel strongly about these obligations and will continue to adhere to them closely.

PROCEDURES GOVERNING REPORTING TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE (SSCI) ON COVERT ACTION

The DCI and the SSCI agree that a planned intelligence activity may constitute a "significant anticipated intelligence activity" under section 501 of the National Security Act of 1947 (the "Intelligence Oversight Act of 1980") even if the planned activity is part of an ongoing covert action operation within the scope of an existing Presidential Finding pursuant to the Hughes-Ryan Amendment (22 U.S.C. 2422). The DCI and the SSCI further agree that they may better discharge their respective responsibilities under the Oversight Act by reaching a clearer understanding concerning reporting of covert action activity. To this end the DCI and the SSCI make the following representations and undertakings, subject to the possible exceptional circumstances contemplated in the Intelligence Oversight Act:

1. In addition to providing the SSCI with the text of new Presidential Findings concerning covert action, the DCI will provide the SSCI with the contents of the accompanying scope paper following approval of the Finding. The contents of the scope paper will be provided in writing unless the SSCI and the DCI agree that an oral presentation would be preferable. Any subsequent modification to the scope paper will be provided to the SSCI.

2. The DCI also will inform the SSCI of any other planned covert action activities for which higher authority or Presidential approval has been provided, including, but not limited to, approvals of any activity which would substantially change the scope of an ongoing covert action operation.

3. Notification of the above decisions will be provided to the SSCI as soon as practicable and prior to implementation of the actual activity.

4. The DCI and the SSCI recognize that an activity planned to be carried out in connection with an ongoing covert action operation may be of such a nature that the Committee will desire notification of the activity prior to implementation, even if the activity does not require separate higher authority or Presidential approval. The SSCI will, in connection with each ongoing covert action operation, communicate to the DCI the kinds of activities (in addition to those described in Paragraphs 1 and 2) that it would consider to fall in this category. The DCI will independently take steps to ensure that the SSCI is also advised of activities that the DCI reasonably believes fall in this category.

5. When briefing the SSCI on a new Presidential Finding or on any activity described in paragraphs 2 or 4, the presentation should include a discussion of all important elements of the activity, including operational and political risks, possible repercussions under treaty obligations or agreements, and any special issues raised under U.S. law.

6. To keep the SSCI fully and currently informed on the progress and status of each covert action operation, the DCI will provide to the SSCI: (A) a comprehensive annual briefing on all covert action operations; and (B) regular information on implementation of each ongoing operation, with emphasis on aspects in which the SSCI has indicated particular interest.

7. The DCI and the SSCI agree that the above procedures reflect the fact that covert action activities are of particular sensitivity, and it is imperative that every effort be made to prevent their unauthorized disclosure. The SSCI will protect the

information provided pursuant to these notification procedures in accordance with the procedures set forth in S. Res. 400, and with special regard for the extreme sensitivity of these activities. It is further recognized that public reference to covert action activities raises serious problems for the United States abroad, and, therefore, such references by either the Executive or Legislative Branches are inappropriate. It is also recognized that the compromise of classified information concerning covert activities does not automatically declassify such information. The appearance of references to such activities in the public media does not constitute authorization to discuss such activities. The DCI and the SSCI recognize that the long established policy of the U.S. Government is not to comment publicly on classified intelligence activities.

8. The DCI will establish mechanisms to assure that the SSCI is informed of planned activities as provided by paragraphs 1 through 4, and that the Committee is fully and currently informed as provided by paragraph 6. The DCI will describe these mechanisms to the SSCI.

9. The SSCI, in consultation with the DCI when appropriate, will review and, if necessary, refine the mechanisms which enable it to carry out its responsibilities under the Intelligence Oversight Act.

10. The DCI and the SSCI will jointly review these procedures no later than one year after they become operative, in order to assess their effectiveness and their impact on the ability of the DCI and the Committee to fulfill their respective responsibilities.

BARRY GOLDWATER.
DANIEL P. MOYNIHAN.
WILLIAM J. CASEY.

ADDENDUM TO PROCEDURES GOVERNING REPORTING TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE ON COVERT ACTION

1. In accordance with Paragraph 10 of the Procedures Governing Reporting to the SSCI on Covert Action, executed on June 6, 1984, the SSCI and the DCI have jointly reviewed the Procedures in order to assess their effectiveness and their impact on the ability of the Committee and the DCI to fulfill their respective responsibilities under section 501 of the National Security Act of 1947.

2. The Committee and the DCI agree that the Procedures have worked well and that they have aided the Committee and the DCI in the fulfillment of their respective responsibilities. The Committee and the DCI also agree to add the following Procedures set forth below:

In accordance with the covert action approval and coordination mechanisms set forth in NSDD 159, the "advisory" format will be used to convey to the SCCI the substance of Presidential Findings, scope papers, and memoranda of notification.

Advisories will specifically take note of any instance in which substantial nonroutine support for a covert action operation is to be provided by an agency or element of the U.S. Government other than the agency tasked with carrying out the operation, or by a foreign government or element thereof. It is further agreed that advisories will describe the nature and scope of such support.

In any case in which the limited prior notice provisions of section 501(a)(1)(B) of the National Security Act are invoked, the advisory or oral notification will affirm that the President has determined that it is essential to limit prior notice. It is further agreed that in any section 501(a)(1)(B) situation, substantive notification will be provided to the Chairman and Vice Chairman of the SSCI at the earliest practicable moment, and that the Chairman and Vice Chairman will assist to the best of their abilities in facilitating secure notification of the Majority and Minority leaders of the Senate if they have not already been notified. It is understood that responsibility for accomplishment of the required notification rests with the Executive Branch.

It is understood that paragraph 6 of the Procedures, which requires that the SSCI shall be kept fully and currently informed of each covert action operation, shall include significant developments in or related to covert action operations.

The DCI will make every reasonable effort to inform the Committee of Presidential Findings and significant covert action activities and developments as soon as practicable.

3. In accordance with paragraph 4 of the Procedures, the DCI recognizes that significant implementing activities in military or paramilitary covert action operations are matters of special interest and concern to the Committee. It is agreed, therefore, that notification of the Committee prior to implementation will be accomplished in

the following situations, even if there is no requirement for separate higher authority or Presidential approval or notification:

Significant military equipment actually is to be supplied for the first time in an ongoing operation, or there is a significant change in the quantity or quality of equipment provided;

Equipment of identifiable U.S. Government origin is initially made available in addition to or in lieu of nonattributable equipment;

There is any significant change involving the participation of U.S. military or civilian staff, or contractor or agent personnel, in military or paramilitary activities.

4. The DCI understands that when a covert action operation includes the provision of material assistance or training to a foreign government, element, or entity that simultaneously is receiving the same kind of U.S. material assistance or training *overtly*, the DCI will explain the rationale for the covert component.

5. The DCI understandings that the Committee wishes to be informed if the President ever decides to waive, change, or rescind any Executive Order provision applicable to the conduct of covert action operations.

6. The Committee and the DCI recognize that the understandings and undertakings set forth in this document are subject to the possible exceptional circumstances contemplated in section 501 of the National Security Act.

7. The Procedures Governing Reporting to the SSCI on covert action, as modified by this agreement, will remain in force until modified by mutual agreement.

DAVE DURENBERGER.
PATRICK LEAHY.
WILLIAM CASEY.

Chairman BOREN. At this time I want to turn to the Vice Chairman of the Committee, the distinguished Senator from Maine, Senator Bill Cohen, for any opening comments that he might wish to make.

STATEMENT OF HON. WILLIAM COHEN, A U.S. SENATOR FROM THE STATE OF MAINE

Senator COHEN. Thank you, Mr. Chairman. I'd like to join you in welcoming Mr. Gates to the Committee. I think he is an individual who is well known to us, having worked very closely with the Committee and the staff for a number of years now.

Assuming he is confirmed, he will be the youngest person ever appointed as Director of Central Intelligence, which I think is a measure of his competence and accomplishments. It also gives lie to Oscar Wilde's observation that the trouble with youth is that it is wasted on the young. He is a man who has spent his entire professional career in the service of the Agency, assuming ever-higher levels of responsibility including his most recent service as Acting Director during Bill Casey's illness.

Despite his years, Mr. Gates is an experienced and seasoned professional; well-acquainted not only with the workings of the Agency and the Intelligence Community, but also the entire national security structure of the government, and I think it's probably gratifying for the Intelligence Community to have one of its own chosen to take over the reins. So I congratulate you on this distinction.

The role which the Intelligence Community plays in support of U.S. defense and foreign policy interests is, obviously, vital. When it succeeds, the United States is provided an advantage, and the decisions we make as a Nation are more prudent and better results can be expected. But when it fails, we are left in the dark, unsure of our position and at a great disadvantage in coping with the rest of the world.

So, the responsibilities of the position for which you have been nominated—the Director of Central Intelligence—have awesome implications for the national security of the United States. They require not only a diligent hand, but also maturity and sound judgment. And they require an understanding of the needs of government—and of how our government relates to others. And most importantly, they require an understanding of our system of government, and an appreciation for the role each branch has to play, especially in the area of intelligence.

The recent investigation undertaken by the Committee into the Iran arms sales and the alleged diversion of funds to the Contras in Nicaragua makes me question how well the Administration understands these fundamental requirements. Certainly, in the confirmation hearings, we, as a Committee, are obliged to explore further your role in these events, particularly as they may reflect upon your understanding of the obligations to this Committee of the position to which you have been nominated.

But beyond that line of inquiry, I think it's also desirable that we have the benefit of your views in terms of the other significant aspects of the agency's operations, as well as of the Intelligence Community you would lead should you be confirmed. It is important that we keep our perspective in the course of these hearings. Covert actions are but a small part of the Intelligence Community's responsibilities, but they seem to overwhelm the rest of the agenda. And I would hope that we can devote some proportional amount of time during the course of today or tomorrow—however long it takes to conclude these proceedings—to explore the functions of the Intelligence Community and the CIA which also deserve airing.

I might point out Mr. Chairman, this is one of the few occasions where this sort of discussion is held in open session by the Committee, and I think we all appreciate the necessity of avoiding areas of discussion that might be classified, but I'm confident that we can conclude our business as such and can conduct these hearings in a very fruitful way without reference to classified aspects of the many significant areas that are going to be confronting the Committee.

So, I welcome you, Mr. Gates, and look forward to your testimony.

Chairman BOREN. Thank you very much, Senator Cohen. I now will turn to Senator Lloyd Bentsen of Texas to ask if he has any additional opening comments.

STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator BENTSEN. Thank you very much, Mr. Chairman. I'm delighted to see that we're looking at a professional in this job. Time is such that this is no opportunity to reward some political friend or someone who has proven his political allegiance to an administration. It's a time to have someone who understands the divisions of power, the checks and balances that we have under this system of government of ours.

As I look at your professional qualifications, Mr. Gates, they certainly are of the highest order. I am pleased to see someone who

has won one of the highest awards that is given to a Federal employee. And, in turn, has received some of the highest awards given to those in the intelligence service. I am very pleased to have you before us this morning, and I'll be looking forward to your testimony. Thank you.

Chairman BOREN. Thank you, Senator Bentsen. Senator Roth.

STATEMENT OF HON. WILLIAM V. ROTH, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator ROTH. Thank you, Mr. Chairman. I, too, am very pleased that a professional has been selected to head up CIA. Like Lloyd Bentsen, I think this is so for many reasons. One of the key things, Mr. Gates, I'm going to be interested in in your testimony today is how you view the role of Director of Central Intelligence—whether you look upon it as a policymaking role, an individual that becomes much involved in foreign and national security matters, or whether you look upon it primarily as an adviser. I have some rather strong feelings in this area, Mr. Gates. It's my judgment that the Director should be an administrator and not a policymaker. I understand that in large part this depends upon the desires of the President. But, I'm concerned that when the Director of Central Intelligence gets involved in policymaking, the lines between policymaker and partisan politics sometimes become very intertwined. And, as the Chairman of this Committee has already stated, I think it's critically important that the intelligence establishment has bipartisan support. For that reason I think it's important that the Director of Central Intelligence concern himself primarily with questions of administration, of showing this country has adequate intelligence, that it's collected in compliance with the law, and particularly, that he makes certain that the President and other interested people have both the good news and the bad news. So, in my line of questioning I will be very much interested as to how you envision the role of Director. I might also say, Mr. Gates, that in saying that, I think it's important that you have a strong position because I understand that there are turf wars—differences between the Department of Defense and the CIA do not always make for an easy relationship—and that it's important that you have the clout to ensure there will be adequate intelligence funds. So, I look forward to your testimony today. Thank you, Mr. Chairman.

Chairman BOREN. Thank you, Senator Roth. Senator Hollings.

STATEMENT OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator HOLLINGS. Thank you, Mr. Chairman. Mr. Gates, we welcome you to the Committee. I understand your highly efficient record. It doesn't reconcile, however, with the House report on counterintelligence that has recently been issued: faulty hiring practices, inadequate and inefficient background investigations; lack of full coordination and information exchange between the agencies; insufficient adherence to the need to know principle; overclassification of security documents, proliferation of personnel clearances, thoughtless firing practices, and over reliance on poly-

graph exams. That's been the public record of the Intelligence Community for the past 2 or 3 years—those who have defected and gone back or others that never should have been hired who have gone over to the other side. I don't want to know about that specifically but instead, what you intend to do about it on the one hand and how your lack of experience in the operational end will affect it on the other hand. I understand you've performed exceedingly well in policy analysis, but are deficient somewhat in the operational end or the development of human intelligence. I think that's the great deficiency that we have in intelligence work, and I'll be looking forward to working with you on it. Thank you, Mr. Chairman.

Chairman BOREN. Thank you, Senator Hollings. Senator Hatch.

STATEMENT OF HON. ORRIN HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman. Mr. Gates, welcome to the Committee. It will be an interesting confirmation process. I wish you well, and I believe that you'll handle yourself very well under the circumstances. This is a tough position. It has everybody of consequence looking over your shoulder up here on the Hill. You have to be concerned about what is disclosed and what isn't disclosed. You have to be concerned about all kinds of problems all over the world. And, you have to be concerned about loyalty to whomever is President. So, I want to wish you well and welcome you to the Committee, and I look forward to having you, as a professional, run this agency. Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Senator Hatch. Senator Bradley.

STATEMENT OF HON. BILL BRADLEY, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BRADLEY. Thank you very much, Mr. Chairman. I'd like to welcome Mr. Gates to the Committee and say that your nomination comes before the Committee when the Intelligence Community is once again in the eye of a storm. Allegations of mistakes and misjudgments surround the CIA, jeopardizing its ability to function effectively.

The next Director of Central Intelligence will have to lead the community through yet another round of probing investigations. At the same time, he will have to keep the President and the Congress fully alert to the problems and opportunities the United States will be facing around the world. Keeping the Intelligence Community effective under these circumstances will be a herculean task.

The Committee owes it to the rest of the Senate to subject Mr. Gates' nomination to an exceptionally thorough review in light of his positions as Deputy Director for Intelligence, Chairman of National Intelligence Council and Deputy Director of Central Intelligence during the course of the Iran-Contra affair.

In the coming months Mr. Gates will be distracted and perhaps even preoccupied by the need to explain his personal involvement in the Iran-Contra affair to the three special investigating bodies.

Can he do the job as Director under these circumstances? These hearings should make that assessment.

Another reason for careful scrutiny of this nomination is that already some would tie the Intelligence Community's hands with new legislative restraints. Frankly, I find this prospect troubling.

I'd like to see us make the existing oversight statutes work rather than put the Community in a straightjacket in order to prevent abuse. We can't realistically expect our intelligence services to perform sensitive missions like combatting terrorism if Congress is constantly looking over their shoulders or holding their hands. They need adequate flexibility and independence. Otherwise, we will be left with a bunch of nervous bureaucrats for whom the principal intelligence mission is to ensure compliance with an ever more intricate web of laws. The world is just too dangerous a place for our Intelligence Community not to be the best it can be, and for Congress we can't afford to settle for less. But the flip side of flexibility and independence is accountability and judgment.

That's why the quality of the people appointed to high office, especially to such a vital and sensitive position as the Director of Central Intelligence, is the primary determinant of how well the U.S. Government serves and protects our national interest, and whether these people have judgment and integrity will be far more important than whether we tinker with statutes or extract pledges of good behavior.

So while we need professional knowledge and managerial competence in the next Director of Central Intelligence, he must be also, and more importantly, someone whose leadership rests on sound judgment and whose integrity is beyond reproach.

The main questions I will have for Mr. Gates will try to assess whether, notwithstanding questions about his role in the Iran-Contra affair, he now has the judgment needed to win the Senate's trust and support.

Finally, I'd urge that the Committee consider a closed session with Mr. Gates to explore these and other issues in more detail than is possible in public hearing. In particular, I'd like to be able to determine whether Mr. Gates is committed to creating a climate in which individual analysts can express politically uncongenial or intellectually unfashionable views; whether he's committeed to supporting some new arms control monitoring initiatives that may be urgently needed but that have not been budgeted for fiscal year 1988 or 1989; and finally, whether he's committed to supporting public hearings and debate on certain controversial covert paramilitary programs along the lines suggested in a bill that I introduced last year with Senator Leahy and Mathias.

Mr. Chairman, these hearings on Mr. Gates' nomination may well be the most important hearings the Committee holds in the next couple of years. It's our opportunity to repair some of the damage caused by the Iran-Contra affair and to help restore the Intelligence Community's credibility and effectiveness by ensuring that the next Director enjoys the respect of his colleagues and the confidence of Congress and the American people. Oversight should not be confined to receiving notice of failures or illegalities. Oversight must also strengthen and legitimize those intelligence activities that are central to our security.

Mr. Chairman, that's what, I hope, today's hearing will be about.

Chairman BOREN. Thank you very much, Senator Bradley. Senator Specter, do you have an opening statement?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I consider this hearing the most important Executive confirmation hearing for the Reagan administration with the possible exception of the confirmation hearing of Secretary Shultz. I believe it is important because of the importance of the CIA today on so many functions—the gathering of intelligence for strategic purposes, U.S.-U.S.S.R. relations, covert activities, the fight against terrorism, the issue of securing release of hostages. It is my view that the Director of Central Intelligence must have judgment and leadership and the strength to assert that judgment and leadership in the face of severe difficulties. It is against this background that I have serious reservations about Mr. Gates' qualifications, which I have expressed directly to Mr. Gates in just this manner when we had our private meeting earlier this month. I'm aware of Mr. Gates' excellent academic background and his apparently good credentials from career service. I've read a goodly number of his speeches and presentations, and they are of very high scholarship and scholastic ability. But, the serious questions which concern this Senator arise from Mr. Gates' participation in the sale of arms to Iran and the subsequent diversion of funds to the Contras. As I say, I have expressed these reservations and will question you, Mr. Gates, as a follow up to our earlier meeting, and would like to give at this time illustrations of these concerns during the question and answer period.

I'm concerned about your participation in the preparation of the closed session with Director Casey on November 21 in terms of the openness, thoroughness, and candidness of the CIA's disclosures to this Committee at that very critical date, which shortly preceded the disclosures by the President and by Attorney General Meese. This issue came in to some focus, Mr. Gates, when Senator Leahy asked in your confirmation hearings for Deputy Director about your view as to your willingness to correct anybody who came forward and gave intentionally or negligently inaccurate or incomplete testimony. The statement which you made to this Committee at that time was that you have my assurance that I would do so. The questions which arise in my mind involve the testimony of Director Casey in omitting any reference to the diversion to the Contras, in omitting the vast bulk of substance of the arms sales to Iran, including the so-called retrofitting of the Finding.

I am concerned, Mr. Gates, with the judgment which you have displayed so far—and we'll have an opportunity to explore this for the record—on recognizing the serious questions of impropriety or illegality on the alleged diversion of funds to the Contras. A very brief reference in these notes are public now with the Chairman's introduction of them. Your response in the December 4 session—and I give a very brief excerpt—referring to Colonel North, "North then made a very cryptic reference to a Swiss bank account and

money for the Contras." Director Casey and I did not pursue that. Later you do say that you had made an inquiry and were assured by Colonel North that the CIA was completely clean, but I do believe there has to be a full statement as to your failure to pursue that critical cryptic remark at that time.

Later in the same hearings—again referring to Colonel North—you say we didn't want to ask him factual questions about what he was doing with the funds. Senator Cohen asked the question, why. You respond, because we knew he was involved, or we assumed I should say, and we didn't want to get involved in knowing about the source of funding. These, Mr. Gates, are questions which I think are of tremendous importance, notwithstanding your fine academic background and your career service record, in assessing whether you have the judgment and leadership and the strength to pursue the very tough kinds of questions which, at least I believe, the Director of Central Intelligence must have to pursue if the CIA is going to have the backing of the Congress on the very many important roles which it must fulfill in the immediate future. Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Senator Specter. Senator Nunn, do you have an opening statement that you wish to make? Senator DeConcini.

STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, thank you. And Mr. Gates, I reviewed your background and experience level, and certainly you meet that criteria that I think is one of a true professional. My concern, and though I know there are other committees that are charged with the total investigation of the current Iran-Contra diversion problem, are those expressed by my colleague, Senator Specter of Pennsylvania. I don't know how I can say anything but hope that you clarify for me what your involvement was. I have no allegations whatsoever towards you, but I am very concerned about when you knew these things were taking place—many of them reports of your advice to Mr. Casey, the Director then, why some time period lapsed according to other witnesses that testified before you conveyed some of this information, and what you think your obligation is, and why, if indeed, there was a time lapse between when you were advised of this operation of trading arms and not advising Congress, or perhaps you have a very good answer in pursuing that that advice was given and not followed. I hope that these hearings will clarify that because it is crucial to this Senator to be satisfied that you are not plagued by a problem that I see in the CIA at this time, and perhaps for a long period of time, of lack of judgment, lack of confidence in conveying information to the key members of the Intelligence Committees here and the leadership. These trouble me immensely. And, so, Mr. Gates, I sit here with a total open mind—very influenced by your outstanding professional record, very questioned about your involvement with the covert activity that no longer is covert, and what your role was in it, what your advice was in it, and what you would do to correct the prob-

lems that have occurred as a result of the exposure on this particular matter. Thank you, Mr. Chairman.

Chairman BOREN. Thank you Senator DeConcini. Senator Hecht.

STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HECHT. Thank you, Mr. Chairman. Mr Gates, I welcome you here too. You are going to enter into one of the most important positions in America and also in the free world. In my opinion the world has not witnessed such a propaganda ploy or scheme as we are now doing from Mr. Gorbachev. Not since the days of Hitler when he told Prime Minister Neville Chamberlain that he would be satisfied if he could just have Czechoslovakia. He said his territorial needs would be met. The ambitions of the Soviet Union are far greater than that. Communist activity in Afghanistan, Vietnam, North Korea, Syria, Libya, Philippine Islands, Angola, Mozambique, Zimbabwe, just to mention a few and also closer to our own shores; Cuba and Nicaragua. Every time something bad happens there's always a silver lining. At least, America now is focusing on Nicaragua and the importance of not having Communist involvement in our hemisphere.

You are also going to be faced with new Soviet challenges in space. I hope you will continue the policies of Bill Casey because he has recruited some of the most outstanding and dedicated personnel that I've ever met. And I hope, Mr. Gates, you will always remember the words of the old Roman general, if you want peace, prepare for war.

Thank you.

Chairman BOREN. Thank you, Senator Hecht. We have with us this morning two distinguished former leaders of this Committee: Senator Moynihan, the former Vice Chairman of this Committee, has requested to appear this morning and to discuss the Memoranda of Understanding which I read into the record, Senator Moynihan, just before you arrived, and provide some historic perspective on those. Senator Moynihan, we would be delighted to recognize you at this time for any opening comments which you might wish to make.

STATEMENT OF HON. DANIEL P. MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, you are very gracious to allow an old Member to appear, and I do for the purpose, as you indicate, not of discussing the specific confirmation hearings, but to give you some background I think the Committee might want, and which we now can put on the record thanks to your openness in this matter, about how these Committees developed and one of the specific understandings about the one previous crisis which we have had in our relationships with the Intelligence Community and how it was resolved and how it seems to have returned.

A quick statement about the success of the oversight experiment. I think it should be clear that there is no nation—certainly no democratic nation ever in history—to try to do what was undertak-

en in 1976. The Bundestag in the Federal Republic of Germany has a very early effort of this kind, but we are the only ones who commenced a full blown effort and saw it come to some considerable fruition.

If I could introduce with that regard, Mr. Chairman, because this matter is contested, the statement that John McMahon, Mr. Gates' distinguished predecessor, a career officer also, made before this Committee on May 26, 1982, describing the time when the Committees began. He said:

> The Agency indeed was down in 1978, and I think since then we have begun to rebuild. And a great deal of credit for that rebuild belongs to Congress because Congress led the charge to give the resources, both manpower and money, to the agency, and to the Intelligence Community to start that rebuild, and we now have been blessed in the last fiscal year and it looks like from all indications the next fiscal year a rebuild which will begin to put us back on track.

He went on to say:

> I feel that oversight is a vital part of our existence in the intelligence world, and welcome it.
>
> In fact, I was mentioning to the Staff Director today that back in 1963 or 1964 when I was at a far lower position in the agency, I suggested that the agency seek an Oversight Committee and I did not for the comfort of oversight—in fact, it did not cross my mind, in the manner which I know it today, but what I was looking for was an advocate because we had no one beating the bushes up on the Hill for us. We were left without a father, so to speak, and I wanted an Oversight Committee much like the Joint Atomic Energy Committee so that someone on the Hill who understood and appreciated us could carry our message to the rest of the Congress.

I'd like to suggest, Mr. Chairman, and the record shows, that you would know that this is exactly what happened, as Mr. Gates himself has stated. The proceedings developed; it took some learning. But, by the time it had matured a bit, as Mr. Gates said in his testimony in April of 1986, I quote, "The relationship between the Congressional Oversight Committees and the Intelligence Community is unique in the world." In numbers of briefings exchanged, the confidences kept, it was singular. The essence of those briefings was in the first part the necessary information needed to craft a budget and defend it in the Appropriations Committees and on the floor.

Second, that provision of the statute that said, we would be informed of any significant anticipated activities. That is to say, in advance—with the provision that if something of great urgency was involved, the President could do so subsequently in a timely manner. This worked very well, Mr. Chairman, time and again. The practice evolved of briefing the Chairman and Vice Chairman only and letting them judge whether to brief the whole Committee. Senator Goldwater and I were told over and again about sensitive matters and it worked out very well until the April of 1984 when it emerged that we had not been told about the mining of Nicaraguan harbors.

Senator Goldwater, who would speak for himself were he here, was hurt, was dismayed. And the more so when the DCI said we had been informed. He sent a public letter on April 9 to the Director, Mr. Casey, and said that what had happened was an act of war, that it was a violation of international law and that we had not been told, which was a violation of statute. Two days later in a conference at the—3 days later on April 12, in a conference at the

Naval Academy, the then National Security Advisory, Mr. McFarlane, said that to the contrary we had been told and fully informed. Senator Goldwater had by that point left the country. He used to refer to me as his second in command, and I accepted that role, and it was now my watch, and I was asked what to do, Mr. Chairman. That's the first crisis we had, and I said I would resign as Vice Chairman if that was the view of the Executive Branch, that Barry Goldwater had said something that wasn't so. If you're going to call Barry Goldwater a liar, you're not going to have me to carry your water for you. Nine days later in a manly and patriotic way, Mr. Casey sent a hand written letter to the Chairman, Mr. Goldwater, apologizing. The next day he appeared before our Committee and apologized. And we said, all right, honor is satisfied, let's get on and see if we can't do something about this—to work to see that it doesn't happen again because the President's policies in Central America collapsed in the aftermath of this failure with the Committees. And we asked ourselves, is the problem that we have never defined the word significant in "significant activities." Well, as a common aftermath of a statute—the courts do that. We said, all right. Would a common sense understanding be that anything the President signs off on is significant. There's only so many pieces of paper that get to the President's desk—things at the Executive Branch you won't do without his approval—things you wouldn't do without his instruction.

So on June 6 with the President's explicit agreement negotiated through the National Security Adviser's office, Mr. McFarlane, Mr. Casey signed, Senator Goldwater signed, and I signed an agreement, that has come to be known as the Casey Accord, in which we said that any matter which the President specifically approves in advance will be considered significant and you report it. Don't ponder—report—make that routine automatically. And we thought we had reconstituted a good, and building, and constructive relationship. The fact is, however, 14 months later, almost the exact same persons chose not to abide with the Accord and the aftermath was almost predictable. This time, however, instead of breaking a policy, they almost broke a presidency, and we have our situation here. On the other hand, Mr. Chairman, I would respectfully suggest that we have a good working understanding of the statute—that Mr. Gates, I know, supported it at the time, and might be willing to indicate that he would in his role as DCI abide by it. Had it been done we would not be having this hearing, and I would hope, sir, that you'd use your judgment in the matter. I appreciate the opportunity to go through the history which was perhaps not understood at the time, but we recognized it as a crisis, we did our best, and we're here to record from the shades that we hope you do better.

Chairman BOREN. Thank you very much, Senator Moynihan. I think it's always very useful to us to have historic perspective as we consider issues before us. We learn from what has happened in the past and hopefully we gain constructive lessons from it. We appreciate you taking the time to be with us this morning, and we also appreciate the appearance this morning of the distinguished former Chairman of this Committee, Senator Durenberger, who

has joined us. Senator Durenberger, we would welcome an opening statement from you at this time.

STATEMENT OF HON. DAVE DURENBERGER, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Thank you, Mr. Chairman, and distinguished Members of the Committee. It is an honor and a pleasure to appear before you today to recommend your approval of the President's nomination of Robert M. Gates to be the 14th Director of Central Intelligence. The nomination of Bob Gates comes before this Committee as the result of the tragic illness of Bill Casey, and I would be remiss if I didn't take this opportunity to wish Bill a speedy and a complete recovery and to express the hope that I think all of us have that he'll soon rejoin the public life of the country that he has served so well.

I have recently completed 8 years of oversight of the work of a rather unique intelligence operation in a rather unique country. It has taken—and it will take in the coming years, a special skill to lead the community. The threats that we face as a Nation, the missions that we expect intelligence to fulfill and the difficulties that must be overcome in intelligence collection in the constantly changing global situation demand strong, effective and principled leadership of our intelligence agencies.

The purpose of the hearing today is to evaluate the nomination of Bob Gates and to decide if he can exercise the kind of leadership we need from the Nation's top intelligence officer. His career has spanned many administrations—Democrat and Republican—and he has consistently met the challenge of providing accurate, timely, and relevant intelligence to support the formulation of U.S. defense and foreign policy. This is an essential strength for a professional intelligence officer. In working with Bob Gates, I've come to recognize that perhaps his greatest strength is an ability to see the immediate in the context of the important. Bob has always reflected the role of intelligence in a wider framework than simply reacting to a crisis, and he has worked closely with the Senate Select Committee on Intelligence in the design and the implementation of the new National Intelligence Strategy. So in implementing a vision of intelligence that ties end with means, missions with resources, and capabilities with objectives, Bob Gates has shown himself to be farsighted as well as practical.

This nomination, as you know, marks the first time that a DCI nominee's background has been in the area of analysis rather than in operations. This is significant because good analysis is the product that we in Congress and the public use to evaluate the effectiveness of most of our country's intelligence capabilities. Bob has also spent time on the National Security Council under three presidents and has earned a doctorate in Soviet Studies. Through my years on the Intelligence Committee, I have come to know Bob Gates and his abilities very well. Last April, when the Committee considered Bob's nomination to be Deputy Director of Central Intelligence, I pointed out that the post of DDCI, the Deputy, included many new and challenging responsibilities. And with those responsibilities came the obligation of clear accountability—to the Con-

gress and to the American people. This, of course, is even more true for the Director of Central Intelligence.

What is most significant perhaps about this nomination is that it also marks the assumption of responsibility for the nation's intelligence by the second generation of experts in intelligence. Bob Gates has been Deputy DCI for almost a year, and Acting DCI for almost two months. What kind of a professional in this second generation might he be? Can you imagine a more difficult time to test the skills of this second generation? Pat Moynihan has already talked to you about 1984 and the difficulties of dealing in this Committee with overt-covert operations. 1985 tested the ability of the professionals, as well as of others in this Community, to deal with security. 1985 we know as the Year of the Spy and the Year of the Leak. 1986 was also the Year of the Iran Arms Covert Action. In the latest issue of the "Economist," there's an article entitled, "Oh! For a Bit More Splendid Dullness," and there's a box with a picture of Bob Gates in one of his more confident moods, and it says, as follows:

A patch of professional dullness will suit the CIA well, too.

Mr. William Casey, who had a cancerous tumor removed from his brain in December, resigned as Director of Central Intelligence and his Deputy, Mr. Robert Gates, has been nominated to succeed him. Mr. Casey, who ran Mr. Reagan's 1980 Presidential campaign, was a man after the President's heart. He was an activist winning money and strength for the CIA and building up its readiness for covert operations. He created the Nicaraguan contra army leading the CIA into a number of controversial actions—above all, the 1984 mining of Nicaragua's harbor. The guerrilla campaign against the Sandinistas came to be known as Casey's War. His relations with the Congressional Intelligence Committees were by no means his strong point. Mr. Gates may be the man to win back Congressional confidence in the Agency. His 20 years with the CIA—he's still only 43—have nearly all been on the analytical, not the clandestine, side. A respected specialist on the Soviet Union, he's described as an ideal bureaucrat. Nothing at this stage could be better.

The Senate Intelligence Committee is expected to hurry his confirmation through. The Chairman——

I'm just quoting here, Mr. Chairman——

The Chairman, Senator David Boren, has said he'll not use the occasion for a full scale review of the agency's part as shipping agents for weapons on their way to Iran, and banker for the surreptitious profits from the sale in the Iranian affair.

Senators can, however, be expected to ask Mr. Gates why he did not pass on his suspicions when early last October he and Mr. Casey first heard rumors of the contra connection. The Committee may also use the hearings to ask Mr. Gates one or two questions on what the CIA, and in particular a former Station Chief in Costa Rica, may have been up to

Mr. Chairman, I read that as I lead to the conclusion of my comments, because it is a rather simple, direct statement of the view that a lot of people in this world have of where the Intelligence Community is at, today. Unfortunately, too many people are of that view. And I give it to you because as DCI, Bob Gates' authority is going to increase. It is fair to predict today, as I do, that his performance will increase as well.

You on this Committee have every right—indeed, you have a responsibility—to question Bob Gates' role as DDCI, his respect for law when it conflicts with loyalty either to the President, to the Director of Central Intelligence or to the CIA as an organization. This unique constitutional democracy, the United States of America, gives us special respect and envy of the world because it is, and we are, a government of laws rather than of men. But I have every

confidence that Bob will meet this new challenge as he's met so many others—accepting the responsibility, exceeding expectations and welcoming the accountability that goes with authority. As we face the crucial intelligence challenges in the late 1980's, our Nation deserves the best leadership we can get. And as the Intelligence Community comes under even closer scrutiny, it needs a respected and credible leader. Bob Gates is, I believe, ready and able to provide this necessary leadership.

I thank you, Mr. Chairman and Vice Chair and the Members of the Committee for the opportunity to share those thoughts on the nomination of Bob Gates, and I hope that you will move expeditiously to approve his nomination.

Chairman BOREN. Thank you very much, Senator Durenberger, and we appreciate your taking the time as a former Chairman of this Committee to rejoin us this morning and to share those thoughts with the Members of the Committee.

It is a privilege this morning to have a member of our own committee, the distinguished senior Senator from Virginia, Senator Warner, present with Mr. Gates to officially present him to the Committee this morning. Senator Warner, we recognize you at this time.

STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman and Members of the Committee. Please do not interpret the brevity of my remarks as any lack of my support for this fine man. I think in view of the fact that an hour has passed, I'll basically, as we say in the Senate, submit my statement for the record.

[The document referred to follows:]

PREPARED STATEMENT OF JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Mr. Gates joined the Central Intelligence Agency in 1966, serving as an intelligence analyst and as one of two Assistant National Intelligence Officers for Strategic Programs. In 1974 he was assigned to the National Security Council Staff.

After more than five years at the National Security Council, serving three Presidents, Mr. Gates returned to the Central Intelligence Agency in late 1979. He subsequently was appointed to a series of administrative positions and served as National Intelligence Officer for the Soviet Union prior to his appointment as Deputy Director for Intelligence in January 1982.

As DDI for nearly four and one-half years, Mr. Gates directed the Central Intelligence Agency's component responsible for all analysis and production of finished intelligence. In September 1983, Director Casey appointed Mr. Gates Chairman of the National Intelligence Council concurrent with his position as Deputy Director for Intelligence. As Chairman of the National Intelligence Council, Mr. Gates directed the preparation of all National Intelligence Estimates prepared by the Intelligence Community.

Mr. Gates is the recipient of the Distinguished Intelligence Medal, the Intelligence Medal of Merit and the Arthur S. Fleming Award, which is presented annually to the ten most outstanding young men and women in the Federal Service.

In coming to judgment on the qualifications of Mr. Gates to lead the Nations Intelligence Community and direct the Central Intelligence Agency there are, many issues you are sure to cover. There are, however, two fundamental imperatives that the Oversight Committee must consider.

Does Mr. Gates have the qualifications to ensure that intelligence provided is Relevant to the Needs of the Policy Makers—but at the same time, ensure intelligence is independent of policy.

The Intelligence Community must ensure that it serves the customer. The Intelligence Committee does not fund the foreign intelligence program simply for the sake of gathering intelligence. If it is developed in a vacuum independent of the needs of the consumer intelligence is wasted. The Intelligence Community is ultimately judged not on how much data it gathers, but rather on how much of what it provides is actually useful. To be useful it must be presented in a way in which it is responsive to the needs of the policy maker.

Mr. Gates is uniquely qualified to supervise the community to ensure that it produces relevant intelligence. He has spent years at the top of the National Security structure. He knows first hand the requirements of the senior policy makers—and has served the current administration in exactly this capacity. To be effective the Director of Central Intelligence must have the confidence of the President and the Cabinet—and access to them—this was one of Mr. Casey's great strengths. Mr. Gates has precisely that confidence and access.

Over the last six years, Robert Gates was perhaps the key player in the intelligence business in helping Bill Casey develop and flesh out the extraordinary expansion of the Intelligence Community's capabilities. As Deputy Director for Intelligence, he was Casey's right hand man in overhauling the way the CIA approached its analytical responsibilities, toughening analytical products, sharpening the agency's focus on policy problems and pointing the way at emerging national security problems. In restructuring the way the DDI did business, Robert Gates expanded the directorate's contacts with outside study, and making greater resources available for travel. While Chairman of the Community's National Intelligence Council at the same time, Bob Gates helped Bill Casey expand greatly the number of national intelligence estimates produced while maintaining rigorous analytical standards and a reputation for integrity and objectivity. By all standards, Bob established himself as a leader of the Community's production efforts and as one of this Administration's leading thinkers.

As Deputy Director, Bob turned more to broader community and agency concerns, working hand-in-hand with Bill Casey to ensure the intelligence resource base, to protect and nourish new technical initiatives, improve collection and warning, to establish closer ties between requirements and resources, and to help the community cope with the explosion of information and the steadily growing needs of the policy consumer.

But serving the policy maker well does not mean being subservient to the policy. The DCI must ensure the integrity of Process. The policy maker and those who judge the policy must get the facts. All the facts, good and bad. Intelligence must tell the story straight. The pressures on the community have always been enormous to provide analysis in support of an Administration's objectives. This is not a new phenomenon. But never before in our history has it been more important for the community leader to have the strength and will to resist. We are in an increasingly complex and dangerous world and we cannot afford self deception. There is a unique and special responsibility for independence when it comes to covert action, especially para-military covert action. The DCI is responsible on one-hand for the success of the program but on the other for evaluating and reporting on that success. The DCI must have the personal and professional integrity to honestly grade his own performance and report that evaluation to the President and this committee. Mr. Gates' long service as a professional shows us time after time that he had the strength of character and integrity to stand and deliver the facts even though they are controversial within the Administration. . . . even though they contradict a cherished view . . . even though they contradict a favored policy or program. I have 43 specific documented cases where he, Mr. Gates, has ensured that bad news and controversial analysis was provided to the President and his advisors. Analysis which contradicted U.S. policy assumption or presented a failure of U.S. policy objectives. Some of these relate specifically to policy objectives we hoped to achieve through a covert action.

Senator WARNER. I will, however, Mr. Chairman, make several points.

First, clearly it is incumbent upon this Committee to determine: First, whether this nominee has the qualifications to ensure that the intelligence gathered and provided is relevant to the needs of the policymakers and at the same time to ensure that intelligence is independent of policy. I'm confident the nominee will do both.

Second, to fulfill his task he'll have to have access to the President, Members of the Cabinet, and other senior officials in this administration. I've been given assurances that he will have direct access to the President and therefore be able to fulfill his obligations to his country.

Third, Mr. Chairman, our colleague, Mr. Roth, raised a very pertinent point. That is the DCI must ensure the integrity of the process and have the courage to present the good news, as you said Senator, and the bad news to the users and to indeed the President and others. He must tell the story straight. The pressures on the community have always been enormous to provide analysis in support of an administrative objective. This is not a new phenomenon. But never before in our history has it been more important for the community leader to have the strength and will to resist this political pressure. We are in an increasingly complex and dangerous world and we cannot afford any self-deception. The DCI has a unique and special responsibility for independence. For example, when it comes to covert action the DCI is responsible on one hand for much of the program, and on the other for evaluating and reporting on the success or the failures. I am confident that this nominee will do that.

Mr. Chairman, earlier in our meeting with Members of the Committee, we talked about the course of this nomination and how the committee would proceed. I think what the Chair said is important. That we understand the necessity to act promptly on the President's request for confirmation—that is, for the full Senate to take up the confirmation—on the other hand, we must balance that against the fact that Iran is an ever unfolding story, and that there may be new evidence that likely is to come to the forefront in the Tower Commission Report. I think as a protection to this nominee, since he does not know what's in that report, he should have an opportunity to read it. And after the Members of the Committee have read it, it may well be necessary to reconvene after that report is made public. That is my understanding—is it not, Mr. Chairman?

Chairman BOREN. The Senator from Virginia is certainly correct.

Senator WARNER. Any omission of information from his testimony this morning or unintentional failure to mention something which came along later in that report would not necesarily be a reflection on him.

Chairman BOREN. Again, the Senator from Virginia is certainly correct, and we do plan at the conclusion of these hearings today to stand in recess. We do not plan to act on the nomination during the fourteen day period normally set forth in the rules. We will have every opportunity during that period to reopen the hearings if any information comes to us that justifies reopening it or if indeed the nominee himself would want to reopen the record for any purpose.

Senator WARNER. Mr. Chairman, in conclusion, as I look back over the lengthy record of "the good and bad news" that this nominee has had to deal with, on many, many instances he has gone forward and seen to it that "bad news" has been reported to the President and others in the administration. That, coupled with his distinguished background, lead me to the conclusion that not only

does he have the integrity to perform this most responsible job, but he's got the true grit and the guts to do a good job.

Chairman BOREN. Thank you very much, Senator Warner, and I would say to Mr. Gates that you could not be introduced by a Senator that has more credibility with his colleagues on this Committee. I appreciate very much, Senator Warner, your presenting the nominee this morning.

Mr. Gates, we welcome you to these confirmation hearings. I would ask if you would stand and raise your right hand and be sworn to give testimony for the Committee.

Raise your right hand. Do you, Robert M. Gates, solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GATES. I do.

Chairman BOREN. You may be seated. I would ask Mr. Gates, have you been provided with a copy of the Committee Rules of Procedure?

Mr. GATES. Yes, sir.

Chairman BOREN. We would welcome any opening statement that you might have at this time.

STATEMENT OF ROBERT M. GATES, NOMINEE FOR DIRECTOR OF CENTRAL INTELLIGENCE

Mr. GATES. Thank you, Mr. Chairman.

Mr. Chairman, Members of the Committee. Thank you for your words of welcome and thank you, Senator Warner, for introducing me. I am deeply honored to have been nominated by the President to the position of Director of Central Intelligence.

At the same time, I am profoundly saddened by the circumstances which brings me here—the illness of Director Casey. I cannot let this occasion pass without noting the great debt of gratitude owed by this country and its intelligence services to William J. Casey for his successful restoration of American intelligence. With the support of the President and the Congress, he obtained desperately needed resources to restore and expand our collection and analysis capabilities; he fostered an unprecedented degree of harmony and cooperation among American intelligence organizations; he made our assessments more realistic and honest in presenting differing views; he restored our morale, our sense of purpose and mission; he helped make us more relevant and useful to policymakers and the Congress; he brought our services new respect and cooperation overseas; and he fashioned American intelligence once again into an instrument for use against our adversaries—whether they be drug dealers, those who would steal our technology, or Communists at war with their own people. From the OSS and running agents in Nazi-occupied France to the world of collection satellites in space and laser weapons, Bill Casey has served his country long and with distinction. He is one of the last of that generation of great Americans who emerged from World War II determined that the United States play a critical role in preserving and extending the freedom they had defended at such great cost—and he has worked for over 40 years to fulfill that objective.

Mr. Chairman, in this opening statement, I would like to address briefly three subjects that I believe are of interest to the Committee: My independence and access, my agenda for the Intelligence Community, and my view of Congressional oversight. I am the first career officer nominated for the position of Director of Central Intelligence in 15 years and only the third since the position was established 40 years ago.

The President's instructions to me when he offered the position to me were direct and clear. He told me that he wants his intelligence unvarnished—the good and the bad: It must be professional and it must be objective. He also said that he expected me to come to him directly with intelligence or with concerns whenever I think it appropriate. I gave him my assurances on both counts.

I can assure you that I will hesitate neither to present unwelcome news nor say what I think to policymakers or to Congress. Nor will I hesitate to make whatever personnel or organizational changes are needed to ensure both high quality intelligence and adherence to the rules.

With all that Mr. Casey accomplished over the past 6 years, he would be the first to acknowledge that there remains a significant unfinished agenda for U.S. intelligence. We cannot afford to stand still or be content with caretaking. The National Foreign Intelligence Strategy points the way to the future but let me quickly review what I consider our agenda for the next 2 years and beyond.

The demands upon us for collection and analysis on a dramatically expanding range of subjects has the potential—and some would say already has begun—to weaken our effectiveness in high-priority areas. We must begin working with policymakers to identify those problems where intelligence can make a unique contribution and focus on them. With finite resources we cannot try or pretend to try to collect and analyze information on every conceivable subject of interest to every agency or official of the United States Government; we must prioritize better. This is particularly true as our work on more traditional high priority areas such as Soviet weapons programs is becoming increasingly difficult and more resource intensive.

Another important problem for us to deal with is the avalanche of information, both that acquired through traditional intelligence means and that which is openly available. In some parts of our community we measure computers by the acre and still our ability to exploit information is increasingly hard-pressed. The answer is not less information, but better processing and exploitation. I am convinced that there is room for open cooperation in this area between American intelligence and American business and universities that also are trying to cope with this problem. But we must allocate the resources necessary to ensure effective exploitation of what we collect.

We must build upon the closer cooperation fostered by Mr. Casey among the different elements of the community. As we confront a growing number of problems, we should explore the possibility of some divisions of labor while preserving necessary competitive analysis on critical subjects. For example, the Defense Intelligence Agency has been given the responsibility on behalf of the entire community for maintaining data bases on the military forces in the

third world. I believe there may be other such areas where we can combine both competition and cooperation.

We must foster more analytical competition, both within the Intelligence Community and outside. Our information is often fragmentary or ambiguous. Significant intelligence failures in the past have come when we offered with false certainty assessments that presented either an artificial consensus or forecast only a single outcome to complex developments. While I believe we owe policymakers a clear estimate of what we think will happen in a given situation, we need to be honest enough to admit that there are usually other possibilities and to describe them. The candid presentation of differing views among intelligence agencies is imperative.

We need to continue efforts to expand and improve our human intelligence capabilities. Not only are there critical areas where only human agents can get needed information—for example, early research on advanced weapons—but almost always the only information we get on intentions comes from human sources. We need more case officers, we need them overseas, and we need them assigned to areas where the requirements are most pressing. At the same time, we may need to tighten further our command and control. Finally, we need to intensify current efforts to diversify our officer cadre, bringing in men and women who can move with ease and unobtrusively in all parts of the world.

The experience of the last few years demonstrates the need to redouble our counterintelligence effort, both overseas and in our own government. We must devote more resources to reinvestigations, to security education, to vigilance, and to closer collaboration among the agencies with counterintelligence responsibilities. CIA already has redirected within the last few months tens of millions of dollars to catch up on internal reinvestigations. More needs to be done Government-wide in this and other areas.

We need to continue improving our management of covert activities, making them more efficient and effective, shortening the gap between decisions and implementation, and ensuring that we seek the resources we need to be successful. Simultaneously, we must ensure that no covert action is undertaken without proper coordination and proper written authorization and also that they are conducted in full accordance with the law and our own regulations. Moreover, we owe it to the policy community to ensure that their decision to use covert action not be undercut by shortcomings in our implementation—either in the field or with Congress. Finally, to the degree we are involved in covert action or other operations in support of policy, we must take special care to protect and ensure the objectivity and quality of our analysis.

We must do something about unauthorized disclosures. We must restore discipline within the Government, especially with respect to intelligence sources, techniques and assets. The first steps are more rigorous investigations and the application of firm sanctions as well as better protection of genuinely sensitive documents. Recent steps by this Committee in these respects are welcome and encouraging. The cost of our capabilities from leaks as well as spies has been catastrophic. Better counterintelligence will have little effect if the Soviets can read all about our collection capabilities in the daily press. We must also hope that the American media under-

stands, and we must help them to appreciate, the risks to the Nation's security and the cost to the taxpayer of publishing information on intelligence sources and methods leaked by those who betray the country's trust in them.

We must continue to seek and obtain the resources needed to meet constantly changing intelligence requirements. In a fast-changing and dangerous world, quality intelligence cannot be funded on-again off-again; continued investment in new capabilities is essential. At a time when there are severe pressures on the defense budget, logically resources for intelligence should rise, not be reduced. This is a problem both the Executive branch and the Congress must address. Quality intelligence requires sustained support.

In the years ahead, we will be challenged to recruit, develop and retain an extraordinarily diverse, talented and dedicated group of people. We must recognize the special burdens and sacrifices of people in this unique working environment—especially those overseas—and aggressively explore ways to recruit, retain, and reward people of high quality.

Finally, but first in importance, we must act promptly to strengthen the relationship between the Intelligence Community and our Congressional Committees. Over the past 2 or 3 years, it has seemed like all of us involved have worked to develop greater mutual confidence and trust, only to have some new event or action erase that progress and force us to start over. We must find a way to avoid valleys of mistrust in this relationship. I consider it one of my highest priorities to help re-establish mutual trust and confidence. I believe we are off to a good start. The key, in my view, is better communication on both sides. Close and continuing contact between us, confidence on your part that we will be forthcoming—that you don't have to ask exactly the right question to get the answer or to learn what we are doing, and confidence on our part that the nation's secrets will be protected, represent the most promising path to a more stable and satisfactory relationship.

Mr. Chairman most of our citizens do not realize the uniqueness of the relationship between the Intelligence Community and the Intelligence Oversight Committee or of the ground we are breaking together for the effective operation of a secret intelligence service in the world's most open democracy. Indeed, a public hearing such as this would be inconceivable in any other nation in the world.

As I said last April, the concept and principles of Congressional oversight of intelligence are fully accepted within the Intelligence Community. Nearly two-thirds of those now serving in CIA began their careers after 1976, when oversight as we know it began. They know of no other way of doing business than within the framework of Congressional oversight. At the same time, we realize that, almost by definition, oversight includes skepticism, criticism, and suggestions for improvement. And, obviously, nobody likes to be on the receiving end of criticism. But, whatever frictions arise are usually transitory and do not affect the basic process.

More important, the community's acceptance of oversight is based in substantial measure on recognition of the benefits to us in the Intelligence Community of the process. We remember, for example, that the rebuilding of American intelligence began in the late 1970's in the Congress. Subsequently, both Oversight Commit-

tees have strongly supported our resource needs. You have on occasion defended us in public against unjustified accusations. You have been instrumental in initiating and sponsoring legislation important to our people and our work, including the Identities Protection Act and the CIA Information Act. Oversight has created an environment that fosters adherence to the rules at all levels and discourages corner cutting or abuses. The Committees have contributed to improving the quality of our work and to efficiency. And, finally, the Congressional Committees and executive oversight organizations such as the President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board should give the American people confidence that their intelligence service is accountable, carries out its activities according to the law and that we are guided by standards and values acceptable to them.

It would be naive to believe, given separation of powers issues between the Executive and Legislative branches and the contrasting cultures and needs of a secret service on the one hand and a freely elected Congress on the other, that there will not be difficulties. Yet, with that, I believe that oversight works and that, with oversight, we continue to have the finest intelligence service in the world. Indeed, where others may see some liabilities in oversight, I see important strengths. For example, because people know, through you, that we are accountable and subject to the rule of law, we have access to the best minds and resources of America—in business, the universities, and scientific centers. Some 200,000-250,000 Americans express interest in joining just CIA each year. Most Americans see our efforts as necessary to preserve our freedom—and, because of oversight and the law, not a threat to that freedom.

Mr. Chairman, I cannot conclude my statement without paying tribute, in this public forum, as I did last year, to the brave men and women of American intelligence, military and civilian, who live and work in dangerous and inhospitable places overseas and under enormous pressures here at home. With courage and dedication, they endure personal sacrifice, incredibly long hours, a cloak of secrecy about what they do that excludes even their families, a lack of privacy, and yet anonymity. As the President said in 1984, "The work you do each day is essential to the survival and to the spread of human freedom. You remain the eyes and ears of the free world. You are the tripwire." The Nation can be proud of its intelligence services and, if confirmed, I would be proud to serve with them as Director of Central Intelligence.

Mr. Chairman, this concludes my opening statement. I have submitted for the record answers to the Chairman and Vice Chairman's written questions but, in addition, with the Chairman's permission, I would like to respond orally to two questions, particularly concerning what I heard in the Iranian affair beginning on October the 1st.

Chairman BOREN. I think that would be very useful. Before you begin, let me just ask for the record, if you by incorporation today and under oath affirm the answers that you gave to all of the 9 interrogatories that were submitted for the record?

Mr. GATES. Yes sir.

Chairman BOREN. We would be very happy for you at this point to proceed ahead with the 2 questions that you had mentioned and with your answers to those questions.

Mr. GATES. The first question is on what date did you first learn information, either directly or indirectly, suggesting that funds derived from the sale of arms to Iran possibly have been used to support the Nicaraguan resistance? What was that information and what actions did you take or advise upon learning of such information?

On October 1, our National Intelligence Officer for Counterterrorism met with me to express concern about the operational security of the NSC's Iranian arms project. He said that he had indications that investors had not been repaid for putting up front money for part of the arms deal and that there were confusing reports relating to claims by Tehran that it was overcharged for spare parts.

The NIO also speculated that some of the funds from the Iranian arms sale may have gone to support the Contras. He told me he found worrisome the juxtaposition of reports of overcharging on the one hand and his belief that some of the same private citizens were involved in both the Iranian project and Contra funding.

At the same time, he said he had no evidence of any diversion of funds, no evidence that CIA, NSC, White House or U.S. officials might be involved. Nor did he have any evidence that there might have been a violation of law or wrongdoing.

I was disturbed by the threat to the security of the operation as well as the speculation and directed the NIO to brief the Director of Central Intelligence. The NIO and I met with the DCI on October 7, 1986, and the NIO repeated his worries about the project's operational security and the possibility that there might have been a diversion of some of the Iranian money.

The Director told him to draft a memorandum outlining his concern.

The second question states, after the date set forth in the response to the previous question and prior to the Attorney General's statement on November 25, 1986, state what information you learned, either directly or indirectly, suggesting that funds derived from the sale of arms to Iran possibly had been used to support the Nicaraguan resistance. Describe that information and state when you learned such information and describe what actions you took or advised upon learning such information.

In addition, describe any information that you learned subsequent to the Attorney General's announcement on November 25, which had been known to employees of the Central Intelligence Agency prior to such announcement and describe what actions you took or advised upon learning such information.

On October 7, the same day as the NIO's meeting with the Director and me, the Director received a telephone call from a New York businessman. The businessman knew about the financial aspects of the NSC project, in fact, considerably more than CIA knew, and wanted to express his concern about the security of the operation because of unhappy investors. According to the Memorandum of Conversation prepared by the Director and contrary to recent press accounts, the businessman made no mention in this

October 7 conversation about any possible diversion of funds. I was informed of the conversation soon after it took place.

On October 9, the Director and I met with Colonel North to receive a briefing on his recent meetings with Iranians representing a new channel to senior officials in Tehran. Three subjects were discussed at this meeting: The recent meeting with the Iranians; the security of the project; and the downing of the private benefactor supply plane and capture of Eugene Hasenfus. The Director expressed his concerns about the operational security of the Iran project and there was, as I recall, considerable discussion about the change of Iranian channels and the unhappiness of private investors associated with the first channel.

I told the Director, in North's presence, that he should insist on getting a copy of the January 17 Finding and Colonel North said he would try to arrange it. As I try to reconstruct the conversation, we then turned to Central America, the downing 4 days before of a Contra supply plane and the capture of Mr. Hasenfus. And his appearance in Managua 2 days before, on the 7th.

But it was on the morning of the 9th, the same day as the lunch with North, that Hasenfus said at a press conference that he believed—he worked with people he believed were CIA employees. There was a furor in the press and in Congress about this, and many allegations and questions about CIA involvement. While we had assurances from our people that they had kept their distance from the private benefactors, as a cross-check, I asked Colonel North at the lunch if there were any CIA involvement, direct or indirect, in the private funding effort on behalf of the Contras. He told us that CIA is completely clean, quote unquote, of any contact with those organizing and funding the operation. Because of the allegation of CIA wrongdoing with the Contras, after lunch I made a record of his response, and two hours later, the Director and I came to the Capitol to assure the Chairmen and Vice Chairmen of the two Intelligence Oversight Committees that CIA had not been involved in the flight of the Contra plane.

In this context, I recall that toward the end of the lunch, Colonel North made a cryptic remark about Swiss accounts and Contras. Neither the DCI nor I pursued the comment. I was uneasy about the remark, however, and went back into the Director's office after the lunch to see if he had understood what Colonel North had been saying and if we should be concerned by it. He either hadn't heard or picked up on the remark at all. He seemed unconcerned, and so I did not pursue it further.

Now I believe a word of explanation is in order as to why I did not pursue Colonel North's passing and cryptic remark at the end of the lunch. First, because it involved funding for the Contras, appeared to, I didn't understand what he was talking about. And second, I did not want to pursue the question of private funding for the Contras, not because I suspected a problem, but because of our overall concern not to cross the legal limits on us vis-a-vis the Contras and their private benefactors.

During the period in question, CIA was authorized to provide very limited support to the Nicaraguan resistance. We knew obviously that the private groups were providing support to the resistance, and CIA probably could have learned about these activities

and who was involved. However, we did not want to get as close to the private benefactors as would have been required to collect such information because we did not want to do something that could be misinterpreted as a CIA violation of the statutory prohibitions. It was out of caution to avoid crossing the bounds of the permissible that CIA officers at all levels were urged to avoid involvement with matters concerning private efforts to support the Contras. Indeed, this cautious approach was spelled out explicitly in an early cable to the field soon after passage of the Boland Amendment in 1984. It said, quote, "We are going to be under very close scrutiny on this question and we must take every precaution to ensure that we are not in violation of Congressional prohibition, either in fact or in spirit."

We received the NIO's memorandum laying out his thoughts on October 14. All but one paragraph of the seven page memorandum focused on the unhappy investors and risks to the security of the operation. It was in this context that the NIO observed that one of the intermediaries was unhappy about being left in the lurch by a change of channels for negotiations and said that if the intermediary decided to go public, he might allege that profit from the arms transaction had been redistributed to, "other projects of the U.S. and of Israel."

This was an even more tentative and vague formulation about a possible diversion than when he originally briefed me with no mention of the Contras this time or in writing. I urged the Director to get the memorandum to Admiral Poindexter as quickly as possible. We met with Admiral Poindexter on the next day, October 15; we gave him the memorandum and had him read it on our presence. He kept it.

As I recall, the ensuing conversation focused on the security problem. We repeated our concern that the project was out of control and should be made public, and the Director suggested that the Admiral consult White House Counsel to ensure that all the NSC's activities were proper.

The same day as the meeting with Admiral Poindexter, October 15, based on the NIO's memoradum, I called in the CIA's General Counsel and told him what I knew about the Iran affair including concerns about operational security posed by unhappy investors as well as the NIO's speculation about a possible diversion of Iranian money. I asked him to look into all of this and to ensure that all the CIA's activities were legal and proper. We were later advised that he found nothing improper in CIA's activities, a judgment that has been sustained.

I left on an overseas trip on October 17 and did not return until the 30th. It was during that time that the New York businessman met with the NIO and passed along the Iranian intermediary's belief that some of the money had, "been earmarked for Central America." I did not learn of these follow-up conversations with the businessman until after the Attorney General's statement on November 25. And to the best of my recollection, I did not read even a summary of the memorandum reporting what was said until December 3. In fact, my unfamiliarity with these late October conversations required a correction of the record of my December 4

Senate Select Committee testimony, specifically with respect to what the businessman said and when.

I believe that it was when I was travelling overseas, perhaps after learning of the businessman's comments on a possible diversion, that the Director told Admiral Poindexter that Colonel North should get counsel. I do not know whether he meant White House Counsel, again, or whether it was private counsel. The Director and I met with Admiral Poindexter on November 6 at which time the DCI again urged the Admiral to have White House Counsel review the whole Iranian project. We continued to urge that a public accounting of the entire matter be made.

In summary, I would like to make 3 observations: First, it has been alleged that the DCI or I learned of a diversion of Iranian funds in early October. This is a vast overstatement. In terms of my personal role before November 25, I was aware only of the NIO's speculation of October 1 and Colonel North's cryptic reference of October 9, which I did not associate with the Iranian matter at all. There was no evidence at any time during this period of involvement by CIA, NSC, or U.S. Government officials nor any concern expressed about a possible violation of law. Nor was there, in fact, any evidence that a diversion had taken place. At no point, from October 1 to November 25, did I receive any further information about a possible diversion of funds. I regarded what little information I had as worrisome but extraordinarily flimsy. Security concerns posed by unhappy investors and speculation about the funding involved financial aspects of the Iran initiative arranged by the NSC and about which we knew very little. Therefore, we concluded that the appropriate thing to do was bring these matters to the attention of Admiral Poindexter with a recommendation that the entire matter be reviewed by Counsel. We felt that only they were in a position to evaluate and act on the information we had at the time. We not only passed along all the information and speculation we had to Admiral Poindexter, but we had our own General Counsel review the propriety of CIA's actions, and repeatedly urged that White House Counsel review the NSC's activities and that the entire initiative be made public. I believe these were appropriate and proper actions given what little we had to go on.

Second, while I certainly do not wish to trivialize these activities, it is important, I think, to place them in perspective. Lest it appear that the Iranian affair was the preoccupying issue on our minds during this period, let me point out that during the first 2 weeks in October, both we and you were preoccupied with the downing of the private benefactor airplane in Nicaragua and the capture of Eugene Hasenfus. The Danilloff affair and associated expulsions culminated during this period. We were deeply engaged in preparations for the President's meeting in Reykjavik. Nearly simultaneously, we had a political crisis in the Philippines, a phony Soviet withdrawal from Afghanistan, a major commitment of time and energy related to the British expulsion of the Syrian Ambassador and Syria's involvement in terrorism, a flap over false reports of Korea's Kim Il Sung's death, and a major preoccupation with the renewal of authorized support for the Contra program on October 1, and the associated conflict along the Nicaraguan-Honduran border.

We also were busy with the day-to-day management of the Agency and the Intelligence Community. The brief conversations and speculation about a possible diversion of funds came in the midst of all of these activities.

Third, I recognize my obligation by law to inform the Oversight Committees of any illegal intelligence activities. Yet, at no time in October or November, or in fact to this day, has any evidence or information been brought to me of any illegal intelligence activity in the Iran project. Indeed, several members of both of our Intelligence Oversight Committees have told me they have seen no such evidence either. Informing the Committees of general concerns related to the Iran operation was precluded by the directive in the finding. I also recognize my obligation to report to the Intelligence Oversight Board those intelligence activities conducted by the agency that I have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. In addition, I am to report possible violations of federal criminal laws by employees and of specified criminal laws by any other person to the Attorney General according to the procedures we have agreed to follow.

I considered in October and November and even today that it would have been irresponsible to report to these bodies the flimsy speculation of October 1.

Mr. Chairman, I would like to just add one additional comment to the responses to these questions. And that is just a brief review of the lessons that I believe we in CIA have learned as a result of this affair.

Let me acknowledge for the record that there were shortcomings in CIA's participation in the Iran project. Our officers violated our own internal regulations in facilitating the flight in November 1985; we did not communicate well enough internally about what was going on; we should have protested more vigorously our involvement in an operation where there was significant elements unknown to us and where we mistrusted key figures; we tolerated ground rules suggested by others that excluded some of our own experts; and we accepted a highly unusual funding mechanism.

I also believe that CIA made an error in not pressing to reverse the directive to withhold prior notification once the operation began to string out after mid-February 1986. The entire undertaking was a unique activity that we are all determined not to repeat. Even so, we have learned important lessons for the future.

Thank you.

Chairman BOREN. Thank you very much, Mr. Gates. And I appreciate your candor in those remarks very, very much.

We are now going to embark on a series of questions—a round of questions—by Members of the Committee limited to 10 minutes each and I will begin the process with some questions clarifying the answers you have just given. You have read from your written responses to the Committee questions number 5 and 6 and set forth the information you learned about the possible diversion of Iranian arms sales funds to the Nicaraguan resistance. You have also set forth the actions that you took on learning of this information.

I want to make sure that your answer fully reflects all of the information which you received during this period and the actions that you took. In particular, I want to ask you that is it correct in

terms of saying that in the period between October 15th, which was the day you first met with Mr. Casey and Admiral Poindexter, and the Attorney General's press conference on November 25, during that period from October 15 to November 25, that you learned absolutely no additional information and had no further discussions whatsoever about the possible diversion of funds to the Contras? I want to be specific about it, in other words, you did not discuss the diversion of funds in your meeting on November 6 with Mr. Casey and Admiral Poindexter or that you did not discuss the diversion in preparing for Mr. Casey's testimony before this Committee on November 21, or during the period of time between the 21st of November and the 25th when the Attorney General was obviously conducting an investigation into the matter. Did you have any further discussion in these two meetings outlined or in any other meetings with other people about the diversion of funds?

Mr. GATES. Trying to reconstruct these conversations several months after the fact is difficult and a little unreliable. I believe that there probably was some discussion of the possibility of diversions in the meeting with Admiral Poindexter on the 6th, but strictly in the context of, again, urging them to go public with the entire project and to Mr. Casey's repeated recommendation to have White House Counsel review the entire project. There was a meeting also on the 13th at which the issue may have been raised again and the additional reminder given to Admiral Poindexter about White House Counsel, I simply don't recall.

Chairman BOREN. On the 6th and the 13th, do you feel that you learned anything materially new about the diversion of funds at either of those meetings?

Mr. GATES. No, sir. I felt, as I try to reconstruct it in retrospect, I felt that it was basically a one way conversation of our concern and recommendations to Admiral Poindexter.

Chairman BOREN. Did you make any comments yourself personally in any one of those meetings about the diversion of funds aspect?

Mr. GATES. I don't recall doing so. No. And there may have been discussion about the possibility of a diversion in the preparation of the Director's testimony. I don't honestly recall. But there was no new information that had come to us.

Chairman BOREN. Are you aware of—and none during the period from the 21st to the 25th with the Attorney General—any conversations between you and the Attorney General or his agents as he began that investigation?

Mr. GATES. No, sir. No, sir.

Chairman BOREN. You mentioned the preparation of Director Casey's testimony for November 21st before the Committee. Are you aware of news media reports that the Secretary of State is alleged to have protested to the White House, perhaps to the President personally, that the testimony which was being prepared was not fully accurate and urging that any inaccuracies be corrected? Are you aware of those accounts?

Mr. GATES. Yes, sir.

Chairman BOREN. To the best of your knowledge, were there any aspects of the testimony discussed that was revised during this period at the urging of others including the Secretary of State?

Mr. GATES. The testimony was continually revised. It may be worth providing a little background. When we received the notification that the Director was to testify on the 21st, he was on an overseas trip. I called in the revelant people from the Agency, from the General Counsel's office, from the Directorate of Operations and others, who would have some part in this affair and some knowledge, and gave them directions in terms of preparing the Director's testimony. And I gave them basically the following guidance:

I said we need to lay out all the facts we can get them in this testimony. And I think I even said the only way that we can hope to prevent a time-consuming and prolonged investigation is to get all the facts on the table right at the outset so that people have confidence that we haven't held anything back.

Unfortunately, what we found in the few days that we had to prepare the testimony was that because of compartmentation within the Agency and the involvement of people overseas, it was very difficult for us to get the basic facts of the Agency's involvement together. And the testimony kept changing regularly during the few days before the hearing took place.

With respect to the stories in the newspaper, I did not participate in the drafting of the testimony itself. I gave the overall direction and basically sent people off to do their work and to have a draft ready when the Director came back from his overseas trip.

But, as I have learned in preparing for this testimony, what happened was that there was a reference in an early draft of the Director's testimony that no one in CIA had known what was on the plane that flew on the 22nd or 23d of—23d or 24th—of November 1985. In the day or so before the hearing, our General Counsel and others involved began to get information that suggested that in fact some of our overseas officers had known or suspected what was on that plane. And the more information we got, the less confident they became about the text. And so my understanding from the people who drafted the text was that that sentence was removed from the text on our own initiative, based on information and concerns expressed by our General Counsel that he couldn't say that. And, in fact, what the Director subsequently said in sworn testimony here on the Hill later on after that when we had our facts more in order, was that no one in senior management in CIA had known what was on that plane and no one involved in the decision at headquarters to let that flight go forward had known what was on that airplane. Although clearly some of our people overseas did.

It is also clear that it became known or suspected at headquarters by Monday or Tuesday following the flight that there was a good possibility that there were weapons on that plane.

Chairman BOREN. You don't know personally whether others outside the CIA, the Secretary of State or others, protested about the original form of the intended testimony?

Mr. GATES. Other than what I have read in newspapers and information that my own officers have given me in the last couple of days of the possibility of some telephone calls and that sort of thing, I didn't know anything about any of that.

Chairman BOREN. Did you personally urge any revisions in the testimony from its original form? Did you participate, for example, in the decision to change the original statement that no one at CIA knew about the cargo on the transport plane in November 1985?

Mr. GATES. No sir. I did not. The only thing in which I personally participated was: there was a discrepancy between our officers and the NSC, particularly Colonel North, as to who had made the telephone call to the Agency requesting help in establishing or in getting the 22—23, 24 November flight underway. Our officers distinctly remembered that it has been Colonel North that made that telephone call or had made that request. The memory downtown was otherwise. The testimony—our recollection was the one that we went with.

Chairman BOREN. You suggested no other revisions of the testimony? No suggestions were made by you which were rejected?

Mr. GATES. No, sir. None that I recall.

Chairman BOREN. Let me direct your attention back to your written response to the Committee's interrogatory number one, the first question, which states that your first and partial involvement in the Iranian project began on December 5, 1985. Does your response include your knowledge of any possible U.S. assent to the transfer of arms to Iran by third countries as was suggested in a memorandum by the National Intelligence Officer for the Middle East which went to the NSC and the State Department in May of 1985? And here I have in mind the question of the Israeli shipment. I want to make sure that we are correct in concluding that, in your capacity as Deputy Director of Intelligence and Chairman of the National Intelligence Council or otherwise, you were completely unaware of the deliberations in July and August among Mr. McFarlane, Secretary of State, Secretary of Defense, Mr. Donald Regan, the President, perhaps others, regarding a possible Iran initiative that could include an Israeli transfer of arms. You were not informed of any U.S. interest in an Israeli transfer of arms to Iran in September 1985, or the assignment of a senior analyst, Charles Allen, to coordinate intelligence related to Iran in September 1985 or the November 1985 Israeli transfer that was assisted by the CIA. In other words, you were not aware of that until after it occurred.

Is it correct to assume that you didn't have information or knowledge of these discussions or policy deliberations about Israeli transfer of arms back during July and August and then on into September?

Mr. GATES. Yes, sir. That is correct.

Chairman BOREN. You had no knowledge whatsoever of those discussions or the fact that policy decisions were being made which would give assent to the transfer of arms by Israel to Iran?

Mr. GATES. No, sir.

Chairman BOREN. In your response to question 2, you highlight certain periods of time in which you were given information about the Iranian arms transfer. You mention, of course, December 5, 1985, and the discussions then. You talk about discussions in early February. And then I believe again on May 1st and then October 1st and thereafter. Now, are those the only periods of time in which you had significant exposure to the Iranian arms sale that was ongoing. In other words, early February, and then it wasn't

again until 1st of May, and then again not until roughly the 1st of October that you really had any significant exposure to it?

Mr. GATES. I was aware—as the answer to the question indicates—of the general scenario for the project as of early February when I saw a scenario paper that had been prepared by the NSC that laid out the progression of—if you will—the exchanges of bona fides leading to the meeting with the idea of opening a strategic dialogue in Tehran in May.

Chairman BOREN. So you knew of the Finding and you knew in February of these additional steps that were being taken to implement it?

Mr. GATES. That is correct. But I was not aware of specific operational details and subsequent to seeing this scenario paper which was basically overtaken by events almost as soon as it was written, because I don't recall any aspect of the scenario ever taking place on the dates or in the form which it was originally described. It originally anticipated a very short timeframe for this entire enterprise. And that quickly went by the boards. There was also a certain degree of skepticism with respect to the scenario as I recall because one of the entries was, as an example, on the 11th of February, Ayatollah Khomeini was supposed to step down. He did not play his part in the scenario.

In any event, afterward, I was kept periodically briefed on the different stages. In other words, after the meeting in Tehran, I was advised, in general terms, that it had taken place and what happened there.

Chairman BOREN. Was that about May 1?

Mr. GATES. That was, I think, May 23d. In that area.

And then the project, from our standpoint at least, entered a fairly quiescent stage and there really wasn't much more going on until Mr. Allen came to me on the 1st of October.

Chairman BOREN. So, as Deputy Director of the Central Intelligence Agency, you really during this period of time, except for this period of May 1st and perhaps again some additional briefings on the 23d, updating, you really did not receive thorough ongoing updated information about how the operation was proceeding until—even though you were Deputy Director of the Central Intelligence Agency, you were more or less in the dark as to how the operation was proceeding in terms of any detailed information, until again about the 1st of October? Is that correct?

Mr. GATES. Well, I would describe it in this way. Although the Director and I had no formal division of labor, you know, you do the technical collection and analysis and the budget and I'll handle everything else, in fact there was an informal division of labor. We both couldn't be on top of everything. The Iranian affair had started a number of months before I became Deputy Director, and was well under way by the time I became Deputy Director. It was an operation on which the Director was receiving briefings and being informed about things on a realtime basis, as far as I could tell. And so he took the lead, if you will, on that particular issue among others. And I took the lead on others, in terms of weekly meetings, keeping informed, keeping on top of it, making sure that things were going as they were supposed to, trying to resolve problems, and so on.

So in this informal division of labor, the Iran project and I would say also our Central American activities which were of special interest to him were basically issues which he paid special attention to.

Chairman BOREN. Senator Cohen.

Senator COHEN. Thank you very much, Mr. Chairman. Mr. Gates, you indicated you first had a meeting with the National Intelligence Officer on October 1, when this issue came to your attention, and you were very concerned about the information that was given to you that day. Why did you wait 6 days before you had a meeting with Director Casey?

Mr. GATES. Well, I simply left the initiative in the NIO's hands to set up a meeting when he could get in to see the Director. I think it's worth recalling from the perspective of the first of October and not the 17th of February, 1986.

Senator COHEN. No, I just asked you why would you wait a week if something of this magnitude——

Mr. GATES. Well, I was just going to say, because there was relatively little sense of urgency about it. My concern was primarily about the operational security. But these had been concerns that the NIO had told me he had been building up over a period of a month or so, so it wasn't something he had suddenly discovered and wanted to get to me urgently——

Senator COHEN. But it was something you suddenly discovered.

Mr. GATES. The information about the private donors and that trouble was new to me, yes.

Senator COHEN. But why did you wait a week before you went to Mr. Casey and said we've got a problem? Got a problem, the operational security may be blown in a matter of days and we have a potential problem with funding. Why would you wait a week?

Mr. GATES. Well again it did not seem to me to be an item of particular urgency at that point.

Senator COHEN. Also on October 9, you indicated that you, at that meeting with Colonel North and Director Casey, you insisted on getting a Finding. Why did the word, or the question of a Finding come to your attention at that point, or the question of getting a copy of the Finding. Wasn't that a concern to you or Director Casey all along?

Mr. GATES. Well, to be perfectly candid, I had not realized or it had not come to my attention as I recall that we didn't have a copy of the Finding. It had been signed several months before I became Deputy Director and upon finding that out, I used what I thought was the first opportunity to insist on getting a copy.

Senator COHEN. During your testimony of December 4th, you and I had a rather extended exchange concerning reluctance of the Central Intelligence Agency to become involved in acquiring knowledge about the funding of the Contras and you responded to a question of mine. I think I described as a sort of conspiracy of silence on the part of a number of key people of not wanting to hear information or discuss information and to simply be in the dark about information and you said the following:

> This is an area where I realize that it is very difficult for a lot of people to accept that when it came to funding of the Contras, agency people, and I would say from the Director on down, actively shunned information. We didn't want to know how

the Contras were being funded in part because we were concerned it would get us involved in crossing the line imposed by the laws, so we actively discourage people from telling us things.

I think you more or less have reiterated that here again today. The question I have is, what do you see as the role of the Director of Central Intelligence in fulfilling your responsibilities to the President, the Congress and to the Nation if you see an apparent violation of the law, or an apparent violation of policy. Do you look the other way and not get involved?

Mr. GATES. Well first of all, based on the information that was available to us—based on the information that the NIO had provided, there was no indication of a violation of law, no indication of an apparent violation, no indication that a diversion had in fact taken place or that there was a problem. Now, in terms of the Contras——

Senator COHEN. Excuse me, at that point Mr. Furmark had, in fact, talked on several occasions to Mr. Casey about the diversion of funds.

Mr. GATES. No sir, not on the 9th. When Mr. Furmark talked to——

Senator COHEN. Not to you but to Mr. Casey——

Mr. GATES. When Mr. Furmark talked to the Director on the 7th, he made no mention of any diversion. It was not until he talked to the NIO on the 22d that he mentioned that that the Iranian intermediary believed there might have been a diversion.

But, you know, it seems to me that, again, I can appreciate the skepticism with which people greet the notion that we turned aside information, but let me—let me just provide a little perspective on that. You know, between October 1984 and October 1986, the Congress passed 4 different pieces of legislation governing our contacts in Central America, ranging from a total prohibition to, at each stage, giving us a little more leeway to provide information and to talk to people. On the third occasion of new legislation, even the Chairmen of the two Oversight Committees here couldn't agree on what the law meant in terms of what we were allowed to do, and it was later clarified.

Now we had a situation where we have a bunch of GS–12s and 13s sitting out in the field, trying to parse legislation where the Congress in some cases can't even figure out exactly what we're prohibited from doing without an exchange of letters between the Chairmen of the Committees and so forth. So our objective in all of this was to try to build in a buffer because we knew we couldn't parse the legislation that closely for people sitting out in the field, much less some of our people in headquarters. So we tried to build in a buffer.

The other part of this that was a problem for us was that we suspected or believed, based on news accounts and what little we were picking up, that there were private Americans involved in this process. And we were also forbidden by law from collecting intelligence on Americans. So we had two different sets of legislation in effect for which we were accountable. And we tried to build in a buffer.

The other thing I might mention is that the only way we could have found out—if we wanted to go out and find out information

about how the Contras were being funded, the classic way to do that in espionage would be to go out and penetrate the organizations. Now, if we had had a paid agent among the Contras or if Eugene Hasenfus had been our agent and that plane went down, and we had to come up here and say, well, yeah, we do have a paid agent in this operation but he really didn't know anything about the rest of that and we weren't directing him, that obviously would not be credible. So for all of these reasons we felt, as that outgoing cable in October 1984 suggested, that it was best to build in as big a buffer as possible so that we wouldn't get cross threaded with either the law or the Congress.

Senator COHEN. Wouldn't you, as a Director of Central Intelligence, want to know how effective the private efforts were to fund the Contras, were they being successful. What would you do, for example, when you came before the Congress in the next session for funding, requested another $100 million? Would you say the program was working or not, or would you have any basis for any information if you didn't gather some information about the impact or the effectiveness of this private funding effort? Wouldn't you want to know?

Mr. GATES. We gathered some information on the military operations of the Contras, but we did not feel the need or that we were able to collect on the private funding. And I think it's fair to say we don't have the faintest idea how much money the Contras obtained from various sources during the period we were prohibited from helping them.

Senator COHEN. Let's go back to December of 1985. According to your statement you learned of the Iran program at that point in the effort to obtain a Presidential Finding to govern the program. What was your role in the development of that Finding?

Mr. GATES. I had no role whatsoever. In fact when we met in Mr. McMahon's office on the 5th of December without any background, he asked those of us from the analysis side several substantive questions about what was going on in Iran. The political situation; there was a report that the Soviets had been flying Bear bombers or Bear reconnaissance aircraft along the Iran/Iraq border, and he wanted to know about that. He wanted to know some order of battle information. We answered those question, those of us from the analytical side. And then there were some references to a plane that had flown a week or so before. We didn't know what that plane was or anything about it, but there was discussion with the operational people in the room about the fact that there were likely to be other such planes. As I recall, McMahon asked one of the operations people if the Finding had been signed, further unspecified, and the operations fellow said it was signed. I'm told that it has been signed.

Senator COHEN. If you were the Deputy Director of the Agency at that point or the DCI itself at that time, what were the kind of questions you would have asked for the preparation of a Finding for the President on a covert of action? Would you have been concerned, for example, with the quality of the personnel that we would have been relying upon?

Mr. GATES. Yes, sir.

Senator COHEN. Would you have then raised questions about Israeli motivations or interests?

Mr. GATES. Yes, sir.

Senator COHEN. Would you have sought independent intelligence confirmation rather than rely upon another country's intelligence service?

Mr. GATES. Yes, sir.

Senator COHEN. Would you have weighed the risks of exposure of such a program?

Mr. GATES. Yes, sir.

Senator COHEN. And analyze the consequences flowing from the exposure itself?

Mr. GATES. Yes, sir.

Senator COHEN. Would you have kept the United States at least one step removed from such an operation by having another country involved in the transfer?

Mr. GATES. I think I would have a problem in trying to carry out that kind of an operation through a third party, given the objectives.

Senator COHEN. Would you, after weighing all of those questions, have recommended support of that Finding? Considering the personnel, considering the source of the intelligence, considering the other country's interest and motivation, considering the risks of exposure and consequences if it were exposed?

Mr. GATES. I would have probably recommended against it.

Senator COHEN. Sorry?

Mr. GATES. I would have probably recommended against it.

Senator COHEN. I turn to—there is some question about the testimony that you gave concerning the preparation of Director Casey's statement before the Committee. And I am going to read from your own statement on December 4th. You indicated to the Committee, that I want him to testify, to read a formal statement as the Director of CIA, to give you a factual accounting, and then on the question/answer session if he wanted to, to take on the mantle of member of the Cabinet, NSC member, intelligence advisor to the President, to talk about the policy in the question and anwer session, but I wanted to use his prepared statement to get the facts on the table as we knew them then.

The question that I asked then and now is how would the Committee ever know the kind of question to ask Director Casey if we didn't have the information presented to us. In other words, you wanted to give a very clinical, sanitized, short statement of the facts as you knew them, without reference to any speculation or reports internal or external about the possibility of funds being diverted for the Contras. How would the Committee ever pursue such an issue if we were not alerted to it? You indicated in your statement before that you were not going to be the kind of Director where you gotta ask the right question or you don't get the right answer.

Mr. GATES. When we were preparing the Director's testimony for the 21st, at that point the only piece of information that I had relevant to any kind of possibility of a diversion was what the NIO had given me on the 1st of October. I had received no additional information prior to that time.

Senator COHEN. Mr. Casey had, had he not?

Mr. GATES. I'm sorry?

Senator COHEN. Mr. Casey had additional information, did he not?

Mr. GATES. I now know that he did, yes. Based on the interview with the businessman on the 22d.

Senator COHEN. But to the extent that you prepared a draft of the statement and it went before the Director, he obviously did not communicate to you that he had additional information that would lend some confirmation to what the NIO told you.

Mr. GATES. No sir. I did not learn that at the time. But I would say that——

Senator COHEN. Would it have made a difference to you if you had known that information?

Mr. GATES. Frankly, no.

Senator COHEN. So you still wouldn't have advised alerting the Committee?

Mr. GATES. In both cases, taking into account the way the NIO laid out the situation in his memorandum of the 14th of October, and again, he was not saying that there was a diversion, he was saying, at the time he wrote his memorandum, that if the Iranian intermediary who had been involved went public because of his unhappiness over the whole affair, that there were a series of allegations that he might make and the possibility that some of the money had been diverted to other projects, not further specified, was then one of those possible allegations. Now, the businessman on the 22d also ascribed the notion of the possibility of a diversion to the Iranian intermediary to the fact that the intermediary believed that that was a possibility. And frankly, given our long-standing reservations about that intermediary, his credibility, and his obviously questionable motives by October, it didn't seem to me that there was enough to go on.

Senator COHEN. Just one more point. There was no question about the reliability or credibility of the businessman who came to Director Casey, he is an old time friend. Right?

Mr. GATES. That's correct.

Senator COHEN. I mean, his revelation or relation of that information wasn't suspect. He made several important calls to the Director. So it wasn't as if this was an unreliable off-the-street source, that we've got some pathological liar out in the Middle East who is going to make all kinds of allegations and therefore we disregard them. It was something a little more substantive than that, wasn't it?

Mr. GATES. Only to the extent that you had what we would characterize as a reliable source with a highly unreliable sub-source.

Senator COHEN. My time is up.

Chairman BOREN. Senator Bentsen?

Senator BENTSEN. Well, I think I will pursue that line of questioning because what we are talking about here, Mr. Gates, is not a question of your professional background, or academic qualifications, but exercise of judgment. We're talking about a continuity of trust between this Committee and the CIA. And I can recall a period when there was a great deal of mistrust, and that we had to structure questions so tightly that there was just no wiggle room

left in order to be sure that we had the right answer. One of the Members said that if his coattail were on fire, the CIA wouldn't tell him, unless he specifically asked it. So when you were in that meeting on October 9th, in which you went to talk to Col. North and the DCI about Iran, and then Col. North brought up the subject of secret Swiss bank accounts and the Contras, it got your antenna up, as it should have. You went so far as to talk to the DCI about it. When you were being questioned at your confirmation hearings in April of last year, one of the Members asked you whether if anyone should volunteer any information to this Committee from the CIA that was misinformation, would you correct it. At one point I believe I heard you say that you did not help prepare the testimony for Mr. Casey on the November the 21st meeting, that that was delegated, and then I hear you say "we" were preparing. Let me pin it down by asking, did you read Mr. Casey's testimony before it was presented to us?

Mr. GATES. I read an early draft of it, yes.

Senator BENTSEN. And yet having suspicions at that time, you did not voice those suspicions, nor have them put into that testimony. It seems to me that the least that could have been done at that point on the part of the DCI or yourself in conjunction with the DCI was to talk to the Chairman and the Vice Chairman of this Committee to alert them of the possibilities and suspicion that there was a diversion of funds from the Iranian sale to the Contras. If we're going to have that kind of relationship of trust then I think there has to be, that if you talk to the DCI about it, and tell Admiral Poindexter that he must review this situation, then I think at our level of oversight which you spoke of in a complimentary manner earlier, that we have to have that kind of thought at least bounced off of the Chairman and Vice Chairman. Would you comment on that?

Mr. GATES. Well sir, I go back to the point I made earlier. If anything, during the course of October/November, my concerns about a diversion diminished because of the absence of any new information. I think that there is a question whether something had been brought to me as speculation with no evidence, we have an appearance of something not looking right, or something not looking proper, but no indication of any wrongdoing or any problem. We are still governed by the direction in the Finding, which had not been formally rescinded at that point, not to brief the Congress about the entire affair. It seems to me that quite honestly the judgment, my judgment, was based on the one piece of information that we had, that that was not significant enough to bring to the Committee's attention. I mean, when you're running a worldwide intelligence service, the amount of speculation and gossip and rumor that involves people, that comes across your desk on a regular basis, is tremendous and you have to weigh that in terms of whether there is any more information available, whether more information comes to you, and then you make a judgment as to what to do with it, whether to put it in an intelligence document and send it around, or whether you notify someone else. I frankly did not believe, and neither did any of my colleagues apparently, that the limited information, the speculation, we had from the 1st of October merited bringing to the Committee's attention at that point.

Senator BENTSEN. Were you aware at that time of an overcharging of the Iranians? And did you have any concern as to where that money went?

Mr. GATES. I think some of our people had been concerned about or had noticed overcharging for some time. But frankly that's not an unusual activity in the international arms market. So that did not rouse particular suspicions.

Senator BENTSEN. Let me ask you then on another point. Current law and regulation requires that the appropriate Committees be advised in a timely fashion of a covert operation. I understand that word is "timely" subject to a great deal of interpretation. How much time do you think is a "timely notification" when an activity is so sensitive that the Committee cannot be told about it before hand? Looking back on the Iranian arms deal, do you believe there should have been notification and consultation of the Congress prior to entering into that kind of a deal? And if not, what was a timely fashion? It seems to me it was about 9 months that elapsed from the time of the arms shipment until we found out about it. And I don't think we would have known about it yet if it hadn't been spilled in a Lebanese newspaper. Would you comment on that?

Mr. GATES. Senator, when the Congress met to revise the Hughes-Ryan Act of 1974, which had not provided for prior notification but simply timely notification, one of the Congress' principal objectives in 1980 was to get guarantees or assurances from the Executive that there would be prior notification. And the most difficult issue I think between the Executive and the Legislature in fashioning the Intelligence Oversight Act of 1980 was this question of prior notification, with the Executive asserting on Constitutional grounds that the President could withhold prior notification. The compromise that was worked out was that prior notification would be the norm, but that there would be allowance for exceptional circumstances. One of those exceptions would have allowed the President in extremely rare situations to notify a limited number of Members of Congress—8 people: the Chairman and Vice Chairman of the two oversight Committees; the Speaker and Minority Leader of the House; and the Majority and Minority Leader of the Senate.

On the question of the President's Constitutional prerogative to withhold prior notification altogether, the Congress did not concede that point but according to the legislative histories I've read, chose not to challenge that Constitutional authority in that Bill. And instead added to the Bill Section 501B which takes into account the possibility that the President might withhold notification, prior notification, and set forth the circumstances under which he should report after withholding notification. And it was acknowledged by all concerned that that would happen only in the most extreme cases. Now in the discussion on the floor, my understanding is that most of the Members of Congress who spoke to the Bill saw such withholding of prior notification in extremely short terms, a few days.

Senator BENTSEN. Mr. Gates, I would like for the record, your opinion as to what is a timely fashion, and not just a review of a debate on the floor or the law. I'm asking for your judgment on it, so I would like you to put that in the record.

Mr. GATES. I'm sorry, but I was laying the ground work for my answer, which is that I think first of all the withholding of prior notification on this Iran affair was the first time since the passage of that law that that had happened. While the Congress had let it be known what its views were on the shortness of that time, that was a point that was never conceded by the Executive. I believe that the prolonged period of withholding went beyond the bounds of the compromise of 1980. And I believe that it stretched the comity of the arrangements between the two branches to the breaking point.

My view is—and my position is and I have discussed that at the White House—I would not recommend to the President withholding prior notification under any except the most extreme circumstances. And then only for a period of several days. It seems to me beyond that point, I believe, I would strongly urge that the Congress be notified.

And the reason for giving the background is simply that that would be my recommendation, but the President could decide otherwise over whatever recommendation that I made. And the Committee needs to know that I would not be disloyal or insubordinate to the President. But I would also add that if I felt the prolongation of the withholding of prior notification reached a point where it threatened a relationship of trust between the Intelligence Community and the Oversight Committees of the Congress, that I would comtemplate resignation under those circumstances.

Senator BENTSEN. Mr. Gates, I strongly approve of that point of view and obviously very much agree with you. My last question is how do you view covert actions as an instrument of U.S. policy? Where do you find them useful? Do you look on your responsibility as DCI as one of proposing such covert actions or just carrying out the directives from outside of the Agency?

Mr. GATES. I believe that—and I presumably will have an opportunity later to talk more broadly about my views of the need for covert action, but in terms of the specific question that you ask, my view is that covert action is an instrument of foreign policy available to the policymaker. It is there along with military activity, diplomatic activity, economic assistance and so on. I believe that in most cases the initiative to use covert action should come from the policy community. By the same token, I think that it's my responsibility if I'm in the middle of a meeting and people are in a quandary about what to do about a particular problem, to at least let them know that that instrument is available to them and the way in which it might be applied. If they choose to pick up that instrument then and use it, that's the policymakers' decision.

Senator BENTSEN. Thank you very much.

Chairman BOREN. Senator Roth.

Senator ROTH. Thank you, Mr. Chairman. Senator Bentsen has covered much of the material that I wanted to raise at this stage with you, Mr. Gates. But I do have a few follow-up questions. First of all, I agree with Senator Bentsen; I very strongly agree with your approach to Title 5, particularly when you say that if you disagree with the decision of the President that you would resign under those circumstances. I think that is a correct point of view. At the same time, I think it is important the record be correct or

full as to what Title B, Accountability for Intelligence Activities, provides. Certainly I do not know what background—do you have any legal training Mr. Gates?

Mr. GATES. No sir.

Senator ROTH. But in any event, as you already testified there is language in Section 501 that provides that the duty to disclose is conditioned, to the extent consistent with all applicable authority and duties, including those conferred by the Constitution upon the Executive and Legislative Branches of the Government. Is that not correct?

Mr. GATES. Yes sir.

Senator ROTH. And as you pointed out in your own statement, in Section B, it's obvious that the legislation enacted by this Congress does anticipate that there will be circumstances in which the President may determine not to notify, which is the general thrust of the legislation. Is that correct?

Mr. GATES. Yes sir.

Senator ROTH. And the question of timely notification is something that will make the legal profession very happy. Because it's a little bit like the size of the chancellor's foot. You certainly can construe it to be a matter of days but there are others who will legally argue that when you say timely the circumstances can go into months and beyond. Would you agree or disagree with that?

Mr. GATES. Yes sir.

Senator ROTH. So I think it's important to understand that Congress in enacting this legislation did take the point of view that there may be situations where the President may decide for whatever reason, that he will not only disclose it to the Intelligence Committee, but to the Majority Leaders, and ranking leaders of the House and Senate. Is that correct?

Mr. GATES. Yes sir.

Senator ROTH. Well, I think that that is important to understand because different, reasonable men may disagree with that and how to apply that language. But I think if there is fault, then maybe the fault is with what Congress enacted and that something that we are not satisfied with perhaps should be reviewed.

But in your opening statement you also said you would have direct access to the President, is that not correct?

Mr. GATES. Yes sir.

Senator ROTH. Is this the kind of a matter you would take to the President if necessary, if you felt that an error was being made in not disclosing a particular covert action?

Mr. GATES. Yes sir.

Senator ROTH. Would you find it satisfactory as apparently it was found in the past, to merely advise, say, the head of NSC that they should consult with their lawyer or would you feel it's essential that you take it on up to the President himself?

Mr. GATES. On the matter of——

Senator ROTH. Well let's say the Iran situation issue as you found it when you and Mr. Casey went to the Director of NSC? Do you think that is satisfactory under those conditions or based on your past experience, would you think it necessary to take the matter up directly with the President?

Mr. GATES. If I felt that there was the possibility of some questionable activity on the part of the NSC, I would take it up with the President. I would take it up first with the head of the NSC, the National Security Advisor, and subsequently with the President.

Senator ROTH. But you would, if necessary, proceed to the President himself?

Mr. GATES. Yes sir.

Senator ROTH. Now when you say you have access to the President, have you been given assurances by other White House staff that you will have the necessary access when you deem it necessary?

Mr. GATES. Yes sir.

Senator ROTH. Without limitation?

Mr. GATES. Yes sir.

Senator ROTH. Have any restraints of any type been placed on you as to what you can say before this Committee, either here in public or later in closed session?

Mr. GATES. No sir.

Senator ROTH. Absolutely none, whatsoever?

Mr. GATES. No.

Senator ROTH. Now when I made my opening remarks, I raised the question as to the role of the Director of CIA. Whether you thought it primarily an advisor, administrator of intelligence, planner, strategic planner or do you see your role as being involved in policymaking in general. I wonder if you would just reiterate for the Committee what you see as the principal responsibility of the Director?

Mr. GATES. If I can use a Soviet expression, "it is not by accident" that the National Security Act makes the Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence advisors or observers to the National Security Council and not statutory members of it. I believe that the appropriate role for the Director is an advisory one.

Senator ROTH. Well I share, as you know, that point of view. Although I recognize that Presidents have chosen otherwise and the role you play is largely determined by the President. But there are many roles the DCI can fill. He can, as we indicated, be Presidential confidante, a policy advisor, super briefer on intelligence, the supreme controller of clandestine intelligence and covert action, a focal point for a wide range of interagency coordination efforts that are needed to meld the several intelligence agencies to a coherent system. How do you see your role?

Mr. GATES. It seems to me that the Director has, as you suggest, many roles. I think the most important of those roles is to exercise responsibility for the gathering of intelligence and the presentation of intelligence to the policy community and to the President so that they are able to make decisions based on the most accurate and relevant information available.

The Intelligence Community, CIA, also has responsibility for covert action, and I believe that the Director should be responsible not only for the effectiveness of that covert action, but also for ensuring that it is being administered in a legal and proper way. The Director also has to look to the future of the community and the

future needs of the country—future problems the country will face. It has been my experience that the Intelligence Community is one of the few places left in this government that looks to the future and invests resources in trying to identify possible concerns ten or fifteen years from now or even further. So I think the Director has to lead the effort in the community not only to ensure that our collection resources, both human and technical, are appropriate for a long period ahead, but also to ensure that the issues that the community is addressing look ahead as well.

The Director has a responsibility for harmonizing the work of the Intelligence Community and making sure that its managed effectively and efficiently. I think that's an important role for him as well.

So there are several of these roles. He is the intelligence advisor to the President, and in my view that means that I not only present the intelligence to the President but that if I have an independent view I give that to him as well. So there are these roles and others as well.

Senator ROTH. Yes, as we stressed earlier, we think it's critically important that not only do you have access but you give the bad news as well as the good news. One final question, Mr. Chairman, then I know we want to break for lunch. And that is the question of the budget. One of the problems that you will probably face as a Director is the problem of fighting with the Department of Defense and others over the intelligence budget, who gets what. And unquestionably, Mr. Casey, the past Director, was in a very strong position to argue such matters with the Secretary of Defense and others. Do you feel that you will be in a position to ensure that the needs of the CIA and the intelligence establishment secure fair consideration in such matters.

Mr. GATES. I think it's absolutely critical, Senator. There really hasn't been all that much fighting with Defense over resources in the past. Frankly, as the Defense budget was growing during the early 1980s there was room within it to accommodate the additional requirements of the Intelligence Community for resources. It's only as the Defense budget has begun to be severely cut back and heavy competition has grown for dollars within the Defense budget that we have come into competition with Defense for those same dollars. As I have told Secretary Weinberger and also Mr. Carlucci, I think that we have an unhealthy situation in which it's a zero sum game between intelligence and defense. That a dollar for intelligence programs is a dollar out of Defense's pocket. I think that intelligence serves this country in a number of ways. Support for the Department of Defense is only one of them. And to require the Department of Defense to give up certain programs in order to meet our resource needs is a problem. And I think that this issue is one that we are going to have to address. One of the problems that we have right now is that while our annual budgets have basically been satisfactory for the last couple of years, and will be through 1988, the fact is that there has not been much money for new initiatives, for new investments in the future, and this is a serious problem that both the Executive and the Congress, I think, are going to have to address.

Senator ROTH. My time is up, Mr. Chairman.

Chairman BOREN. Thank you, very much, Senator Roth. And let me thank my colleagues on the Committee who have not yet had an opportunity to ask questions, for their patience with these proceedings. We will begin with their questions this afternoon. I also want to express my appreciation to Mr. Gates for his responsiveness to the questions. I think we've had a very healthy and constructive exchange of views this morning marked by unusual candor and it has been time well spent by the Committee. We will resume at 2 p.m.

[Whereupon, at 12:43 p.m., the hearing was recessed, to reconvene at 2 p.m.]

AFTERNOON SESSION

Chairman BOREN. The hearings will come to order. And I would remind Mr. Gates that as we continue the testimony your answers will, of course, remain under oath from the oath taken this morning. We'll begin the round of questioning with 10 minutes allocated to each member of the Commmittee and at this point the Chair will recognize Senator Murkowski.

Senator MURKOWSKI. Mr. Gates, I'd like to begin the line of questioning relative to the relationship you had with the Director, Mr. Casey, serving as his Deputy and obviously recognizing Mr. Casey had a rather dramatic management style. I am curious to know what you felt your obligation was as a Deputy, if in the event you came across information that you felt under your interpretation of the law requiring prior notification to Congress. I think you have given Senator Bentsen assurances that I certainly felt good about with regard to what you would do yourself in the position of Director. I think you said that rather than compromise, you'd resign or words to that effect. But I am curious to know in view of obviously the subservient obligation you had as Deputy to serve a Director as dynamic as Mr. Casey, what you felt your obligation was assuming that a situation came across your attention relative to the obligation to notify the Oversight Committee.

Mr. GATES. Well, sir, with respect to the Iran affair, as I indicated earlier, the decisions had all been made with respect to that activity, the Finding and so forth a number of months before I became Deputy Director, including the decision not to notify. During the course of the summer after I became the Deputy, I raised with Mr. Casey several times my concerns that the lack of prior notification was going to lead to serious problems in the relationship with the Committee—with both of the Oversight Committees.

Beyond that, I had been told that the Attorney General had reviewed the Findings so there was no question in my mind that the decision not to prior notify was a legal one so there wasn't a question of wrongdoing or illegality but I did raise with him what I thought would be the cost to our relationship with the Committees.

Senator MURKOWSKI. Basically it was the comfort given to you by the Attorney General in the case of the Iran affair which led you to feel it wasn't necessary even though you had communicated your concern to Mr. Casey. Is that correct?

Mr. GATES. It wasn't necessary to do what, Senator?

Senator MURKOWSKI. To go ahead and initiate any notification on your own.

Mr. GATES. No sir, I did not feel it was an illegal act and as the Deputy it was not my place to be insubordinate to the Director, or to the President.

Senator MURKOWSKI. This concerns me because you—let's take another affair and say what if it wasn't Iran, and if indeed you were serving as Deputy and you had knowledge that in your interpretation it was an obligation to notify the Oversight Committee or the joint Chairmen of the Intelligence Committees, would you only respond if first cleared with the Director or would you take the initiative to do it on your own?

Mr. GATES. I believe that it would be my responsibility as the Deputy to, if I felt that there was a matter of illegality involved or wrongdoing, first to bring it to the Director's attention, if no action were taken, and I were confident that there was serious problem, then my reaction probably would be to go to the Attorney General.

Senator MURKOWSKI. And in this case, in the Iran affair, you did not go to the Attorney General, rather you had advice of the Counsel that it was not illegal and indeed the obligation was really the Director's rather than your own?

Mr. GATES. In the matter of withholding a prior notification, I was assured by Counsel and told that the Attorney General himself had made the judgment that the decision to withhold was a legal decision.

Senator MURKOWSKI. You were told by the Attorney General himself?

Mr. GATES. I was told that the Attorney General himself had said that.

Senator MURKOWSKI. But you did not——

Mr. GATES. I did not hear him say that.

Senator MURKOWSKI. Is there any reason that you didn't go to the Attorney General yourself in this case?

Mr. GATES. I was assured by our Counsel that the Attorney General had reviewed the Finding and that was the judgment of our General Counsel as well.

Senator MURKOWSKI. In a short time this Committee will have an opportunity to question your nomination, I assume, for your assistant, assuming you're confirmed. And I'm curious to know what you would give him as marching orders in the event that there was a recurrence of something that came up that was obviously appropriate that it would be referred to the Intelligence Committees, would you expect him to go through you first; and, in the event you differed, would you anticipate that he would be expected to go to this Committee or go to the Attorney General or is it a working management relationship that pretty much puts the Director in a position of policy and the Deputy is pretty much forced to go along out of reality?

Mr. GATES. I think just as principle of management that the Deputy can't go off, sort of making decisions on his own. I think that the Deputy has an obligation to bring a problem or a concern particularly—of any kind to the attention of the Director, but particularly one that concerns possible wrongdoing or illegality. On that score, it seems to me that if the Deputy does not get satisfac-

tion, then there should be an understanding that he should undertake on his own to go to the Attorney General or to the Committees.

Senator MURKOWSKI. Did you have that understanding with Mr. Casey?

Mr. GATES. We did not have an explicit understanding like that, but I can assure you that if I felt that there was an illegality involved and I had brought it to his attention and nothing happened, that I would have taken further action.

Senator MURKOWSKI. Thank you. I have just one other question. When did you have an opportunity to learn of the character of Ghorbanifar, or it's close to that pronunciation? And how much information did you get initially on his character when his role was identified?

Mr. GATES. I believe that I heard first about his role in this matter probably in February. And it was in the context of being told by some of the people from our clandestine service about their view of him.

Senator MURKOWSKI. Well, after reading the testimony one can't help but wonder why we would involve any business dealings with a person of such questionable character. I gather that he failed a lie detector test some time ago given by the CIA. Did you initiate any effort to communicate the unreliability of this individual? Since it was apparently so flagrant, his lack of character and his questionable reputation and his inability to perform, yet he seemed to get a second chance continually, and I am curious to know wouldn't it ordinarily initiate some direct action when a person is playing such a character role in this effort?

Mr. GATES. Well, by the time I became Deputy Director of Central Intelligence, as I say, those decisions had long been made and I was told by several people, the Deputy Director, the people from the clandestine service, that their concerns about him had been communicated to the NSC.

Senator MURKOWSKI. But you didn't take any action to communicate any suggestion that it be again reviewed based on, perhaps, the fact that the people weren't totally aware of the file that the CIA had on Mr. Ghorbanifar?

Mr. GATES. Based on the fact that I had been informed that what we had on him had been communicated, I did not take further action.

Senator MURKOWSKI. Did you know though how much the questionable character and the fact that he had failed a lie detector test?

Mr. GATES. Yes sir.

Senator MURKOWSKI. Did it occur to you that this individual may not be totally trustworthy?

Mr. GATES. Absolutely.

Senator MURKOWSKI. And, I'm just curious what—wouldn't it ordinarily prompt someone to take an extra step and say are you sure that we want to do business with this gentleman?

Mr. GATES. Senator, I was assured that on several occasions our reservations about this individual had been communicated in the strongest terms.

Senator MURKOWSKI. Could I ask, for the record, who gave—who would be the most prominent person giving that reassurance?

Mr. GATES. That that information had been supplied? I believe that the then Deputy Director, Mr. McMahon, told me and also the Deputy Director for Operations had told me.

Senator MURKOWSKI. Told you?

Mr. GATES. Yes.

Senator MURKOWSKI. But who——

Mr. GATES. That that information had been communicated to the NSC.

Senator MURKOWSKI. To the NSC? Who in the NSC?

Mr. GATES. To Colonel North. And I believe also——

Senator MURKOWSKI. Colonel North?

Mr. GATES. And I believe also to Admiral Poindexter.

Senator MURKOWSKI. And that's as far as it went as far as your recollection goes?

Mr. GATES. Yes sir.

Senator MURKOWSKI. I think my time is up. Thank you.

Chairman BOREN. Thank you very much.

Mr. GATES. I might provide an additional response for the record on that, Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Gates.

Chairman BOREN. That response will be received for the record. Senator Bradley?

Senator BRADLEY. Thank you very much, Mr. Chairman. Mr. Gates, in May of 1985, the National Intelligence Officer for the Middle East prepared a memo that argued for a change in U.S. policy toward Iran. It argued, according to the report, "That the U.S. could permit allies to sell arms to Iran as one alternative means of establishing Western influence so as to offset growing Soviet inroads." As the Chairman of the National Intelligence Council, you were responsible for overseeing a Special National Intelligence Estimate that essentially argued that the Soviets were making inroads into Iran. It was on the strength of that estimate that in part the original Iranian initiative commenced, even though at the time there was strong disagreement in the Intelligence Community. A number of experts in the CIA and other intelligence agencies did not think that the Soviets were making significant inroads in Iran.

Now, 9 months later, after the President finally authorized direct arms sales to Iran, you produced another estimate that essentially reversed your earlier estimate. And this February 1986 estimate essentially validated the view held by some people in the Intelligence Community earlier that indeed the Soviets were not making inroads into Iran.

Now, given this dramatic change in the basis to the President's original initiative to sell arms to Iran, why didn't you go to the President and say: "Mr. President, there's a new estimate. The Soviets are not making inroads to Iran. The basis for the whole Iranian initiative has been called into question."

Mr. GATES. Senator, let me go back to those memoranda and the estimate in just a moment. The paper that was prepared by the NIO for the Middle East in the middle of May, 1985, essentially made the case that the Soviets had the potential to make some in-

roads in Iran during the ensuing months, and further that there were growing signs that there might be significant internal infighting in Iran prior to the death of the Ayatollah.

He indicated that at a time when there were these possibilities for the Soviets that the United States remained locked in hostility with Iran. And he made a number of suggestions for possible ways of removing that—of changing that. He mentioned working with third countries, he mentioned working with strengthening other countries, and so on. His recommendation was that we should work through third countries such as the Europeans and the Japanese. I don't recall that that recommendation included—at the end of the paper—included selling arms.

Two weeks later, a Special National Estimate was prepared that essentially made the same case. But—the one distinction that I would raise is that it raised the potential for the Soviets to make inroads in Iran. It listed a number of possible avenues of action on the part of the Soviets. A number of visits that were coming up. Some discussions on economic assistance, on trade, and so forth that suggested that the Soviets had the potential to take advantage of these and if they did, that they could make some significant headway with the regime.

I do not recall that there were footnotes in that estimate indicating disagreement within the Community on that premise.

Senator BRADLEY. Well, let me refer you to a classified research paper, May 1985, out of the Directorate of Intelligence in CIA. Does that refresh your memory?

Mr. GATES. Yes, sir. That was a separate paper by the Directorate of Intelligence. But I will tell you that the Directorate of Intelligence also had the opportunity to make its own contribution to that estimate and take a disagreeing point of view of the——

Senator BRADLEY. So that view was different from the one that came out of the Special National Intelligence Estimate in May 1985?

Mr. GATES. They apparently found the wording of the estimate acceptable to them in the way that it was couched. I will have to go back and check, but I do not believe there were any footnotes indicating any disagreement by a member of the Intelligence Community with the estimate that was made in that May 30, or end of May, Special National Estimate which, as you obviously know, is coordinated on by all of the members of the Intelligence Community.

Now, the following February, the estimate that was done to update the previous one essentially opened up by saying that, in effect, the Soviets—that the previous estimate had been too pessimistic. That the Soviets had not taken advantage or had not been able to take advantage of some of the opportunities that were before them in 1985 and, second, that the regime in Iran had proved more able to stay on top of their internal problems than had been anticipated.

That estimate was provided to all of the principal policymakers of the government including the President.

Senator BRADLEY. Why didn't you go to the President and make the argument that the new estimate clearly removed one of his

concerns that was responsible for the Iranian initiative commencing.

Mr. GATES. Well, to be perfectly honest, Senator, it's never been clear to me just how significant the role played by either of the estimates or the NIO's paper was in the initiation of the policy with respect to Iran. It seemed to me that the premise which underpinned the policy did not change and that is the importance of establishing some sort of a dialogue with Iran in the hope of having some sort of a future relationship.

Senator BRADLEY. So you're saying it made no difference whether the Soviets were making inroads or not as to the policy implications for the Iranian initiative?

Mr. GATES. It seemed to me that the concerns with respect to the strategic importance of Iran, the likelihood at some point that the Soviets would attempt to exercise influence in Iran and establish a position there remain valid even if they didn't do so within the very short time frame of the estimate involved.

Senator BRADLEY. Well, let me say that a possible interpretation is that the intelligence produced under your direction was tailored to suit the needs of policymakers who were intent on developing a relationship with Iran through the sale of arms.

Mr. GATES. Well, Senator, that's just not true. For one thing, at the time the NIO wrote his paper and at the time the Special National Estimate was written, neither I nor the people preparing those materials had any knowledge of the discussions that were going on in the policy community about an opening to Iran.

Senator BRADLEY. OK. Let's move on to another date. On December 5, 1985, you attended a meeting that was convened by your predecessor and immediate superior, John McMahon, the Deputy Director. At the meeting, you became aware that the CIA was involved in a program for dealing with Iran run by the NSC; that a flight had taken place a few days earlier; and that there were plans for additional flights. You then learned that none of this activity had been authorized by a Presidential Finding. That Mr. McMahon was very concerned about this lack of authorization. And that the White House rejected a draft Finding that would have authorized this activity.

A month later, January 17th, there was a Finding that authorized the NSC staff to sell arms and to provide intelligence to Iran with the CIA's support. The Finding, however, was not provided to the CIA in written form. It barred notification to Congress and it empowered Colonel North to task the CIA Directorate of Intelligence, which you headed, to produce intelligence materials to give to Iran.

Now you objected to this requirement. You said it was too precise. The National Security Advisor overruled your objection. Then in February of 1986, Colonel North showed you [illegible] scenario for the Ayatollah Khomeini to step down on the 11th of February, the anniversary of the revolution. And for U.S. arms to be transferred to Iran and for American hostages to be released and for additional intelligence materials to be provided to the Iranians.

You, at that point, more or less dropped out of the process because you became concerned with your own confirmation process until May 1986, when Mr. McFarlane went to Tehran. Apparently

you did not raise objections to the special mission to Iran by the former National Security Advisor. Is that correct?

Mr. GATES. That is correct.

Senator BRADLEY. Nor did you ask for a complete briefing by Colonel North and your subordinates in the CIA who were involved in planning and supporting the highly risky and objectionable covert action that was authorized by a Finding you had never seen. Is that correct?

Mr. GATES. That is correct.

Senator BRADLEY. Nor did you try to change the Finding to notify Congress in May when Mr. McFarlane's mission to Tehran raised big new risks of public disclosure that could harm relations with Congress if it had not been properly notified beforehand. Is that correct?

Mr. GATES. Yes sir.

Senator BRADLEY. Nor did you take any precautions to insure that the financial arrangements and controls for the sales of U.S. arms to Iran would prevent the diversion of profits to unauthorized projects that Colonel North had reportedly been involved in. Is that correct?

Mr. GATES. I was confident, Senator, that the accounting procedures and the auditing practices that are used by the Agency would have brought to my attention or to others' attention any irregularity or any funds that had not been accounted for or if there were anything that looked out of the ordinary in terms of the funds we were dealing with. And I believe that the ultimate outcome of several investigations demonstrates that that confidence in our own internal procedures was warranted.

Senator BRADLEY. Once again, you did not seek a complete briefing from Colonel North; you did not seek to change the Finding to notify Congress; you did not seek any precautions to insure that the financial arrangements and controls on the sales of arms to Iran would prevent diversion. And yet, beginning April 18, 1986, you were the Deputy Director of Central Intelligence. You shared full responsibility with the DCI for all intelligence activity, including the Iranian initiative.

So, my question to you is, in light of John McMahon's and your own past objections and concerns about this project, concerns that you voiced openly when you were asked to provide special intelligence and because of the high risk of failure, why did you not ask to be fully briefed on what was going on?

Mr. GATES. As I indicated earlier, while as you suggest, I carried equal responsibility perhaps with the Director for this activity along with others, there was this informal division of labor and frankly, this was an issue which the Director paid closer attention to than I did. By the same token, I repeat, this activity had been underway for several months. On at least 2 occasions, objections that we had made, first of all, to the entire enterprise on the part of John McMahon, and then objections on the part of both Mr. McMahon and myself to the provision of intelligence had been overruled. And there was, in my view, no reason to believe in the Spring of 1986 as this operation continued, that there would be any change—further change of view.

Senator BRADLEY. But was there any reliable way that you could have even advised the President on the merits of McFarlane's mission if you hadn't been briefed?

How could you have advised him?

Mr. GATES. Well, we knew that the purpose of the mission was to begin a dialogue with the Iranians. We knew that he had been provided—we had prepared him with some materials on the Soviet Union to use in that briefing. Frankly, it seemed to me that the effort to open a dialogue with the Iranians undertaken in that mission was in effect the logical culmination or the hoped for culmination of the entire enterprise.

Senator BRADLEY. But your question was: 'On balance, is this a risk worth taking?' From an intelligence officer's point of view, is this a risk worth taking given everything you know? And my point is, you didn't seek to inform yourself. You didn't seek to be briefed. You chose not to know. And I can't see how that is giving you any base of information with which you can give the President sound advice.

Mr. GATES. I felt that I was aware of the general outlines of what was being done, although I didn't know a lot of the operational details. And I did not know a lot of the—some of us at the Agency knew about the financial arrangements. So it was difficult to figure that out to begin with. But in my view, I had a general enough understanding of what was going on. That, if I had wanted to offer advice, that McFarlane shouldn't go or that there shouldn't be a dialogue with the Iranians, I knew enough to be in a position to recommend that.

Senator BRADLEY. You knew it was a risk worth taking without prior notification to Congress?

Mr. GATES. I must say that the one—as I have looked back on that entire period, that the only real regret that I have and the one mistake that I think we at the Agency made and that I made was in not pressing, beginning toward the middle or latter part of February, for a reversal of the direction not to notify the Congress.

Senator BRADLEY. Well, my time is up. But just a followup on this last point you made. You say this is a big mistake that you didn't press to see that Congress was notified. In response to one of Senator BRADLEY's questions, you said that you would contemplate resigning if the President overruled your strong recommendations to notify Congress, which you said you'd make directly to the President.

Contemplate? Why wouldn't, without question, you resign?

Mr. GATES. Senator, just to take a hypothetical case, if the President were to have the opportunity to swear a group of hostages and that information were exceptionally tightly held within the Executive branch, and there was a greater risk of life and death, and it was going to take 9 days instead of 4, that would not be an issue over which I would resign.

Senator BRADLEY. But not 14 months?

Mr. GATES. Certainly not 14 months.

Senator BRADLEY. A month?

Mr. GATES. Well, that's beginning to parse it pretty closely but I would begin to be very concerned if the matter went beyond more than several days.

Senator BRADLEY. And if you would think of doing this, contemplate resigning, if the President overruled your strong recommendations as Director, why didn't you as Deputy Director?

Mr. GATES. Again, it was the first time that the President had exercised the authority not to prior notify the Congress on a covert action, and while we knew that the prolonged withhold would create serious problems with the Oversight Committees—and I discussed that with the Director as I indicated earlier, several times—I don't think that people contemplated just how serious the consequences would be. And frankly, one of the reasons for my willingness to make the kind of commitment that I did here this morning on prior notification is because it seems to me that in this process one of the things that has come out of it is that the Congress has made abundantly clear the limits of its tolerance for the withholding of prior notification. And I believe both the Executive and the Legislature have an interest in a relationship of trust between the Intelligence Committees and the CIA. And for that reason, as I said this morning, the point at which I would contemplate resignation would be the point at which I made the judgment that the withholding had reached the point where it threatened that trust.

Senator BRADLEY. Would you have resigned if you were the Director?

Mr. GATES. If I had been the Director? I honestly don't know the answer to that because if I had—the question is whether I would have—I would like to think that I would have gone to the President and recommended revisiting the issue of prior notification. And perhaps if that had happened and he said no, then I would have contemplated resigning.

Chairman BOREN. Mr. Hatch?

Senator HATCH. Thank you, Mr. Chairman. Mr. Gates, I'm concerned as are some of my colleagues as to the position you are being placed in with regard to the longstanding tug of war between the Congress of the United States and the Presidency. As somebody who has been Chairman of the Constitutional Subcommittee for a number of years, I am very concerned with these constitutional issues, and, of course, the various roles and responsibilities between the Legislative branch of Government and the Executive branch of Government. I desire to see you be forthcoming and I applaud your comments to that end in your statement this morning. I personally think that should have sufficed.

But I'm concerned that you may be stampeded into making an unnecessary concession as to what you would do when instructed by the President to not inform the Congress on extremely sensitive covert activities that involve the national security interest. I think it is safe to say that people at the Agency as well as throughout the national security apparatus have been somewhat concerned with some of the leaks that have occurred which apparently have come from Capitol Hill. Is that a fair comment?

Mr. GATES. Yes, sir.

Senator HATCH. You're very concerned about that?

You've seen actual testimony given before either the House or the Senate Committee one day and read the same in the newspaper the next day?

Mr. GATES. Yes, sir.

Senator HATCH. Time after time. Is that a fair comment?

Mr. GATES. Yes, sir.

Senator HATCH. I don't personally believe Members of Congress would do this, but it is done by somebody.

You know, I think you have a very serious constitutional issue here. Congress has a lot of power and it can throw its weight around, it can make life miserable for you. But the President also has a lot of power. And he may have constitutional duties that far outweigh informing Congress. I think you have to acknowledge that, is that correct?

Mr. GATES. Yes, sir.

Senator HATCH. So, what you are saying is that if you—let me see if I'm getting this right—if you believe that the President should disclose certain details of a covert activity to Congress, and you sincerely believe that, and then he refuses to do so and rejects your recommendation, which is sincerely held and forthrightly given and vociferously given, then you would consider resigning under those circumstances? Is that right?

Mr. GATES. Yes, sir.

Senator HATCH. But if you, and as any reasonable person who understands the Constitution and the separation of powers, concluded that maybe the President has a point, that maybe there are lives involved here, or maybe there are other national security interests that far outweigh informing people up here who might the next day have it in the Washington Post, that's not going to cause you to resign, is it?

Mr. GATES. That's why I indicated earlier, Senator, first of all, that under those conditions, I would contemplate resigning. And second——

Senator HATCH. Well, you wouldn't contemplate this if the President were standing four square on constitutional grounds not to disclose, because he is afraid of compromsing our national security interests or even—or even lives of people. You wouldn't have any qualms about that, would you?

Mr. GATES. No, sir.

Senator HATCH. I know you wouldn't. So we can split hairs all we want to. That's what it comes down to. Whether the President is justified in withholding notification to Congress under his constitutional mandate and duties. Is that right?

Mr. GATES. Yes, sir.

Senator HATCH. And that's a delicate question each time, is that right?

Mr. GATES. Yes, sir.

Senator HATCH. And sometimes you may be right and sometimes you may be wrong but all you can tell the community here and the Congress here is that you are going to do it the best you can. You're going to call them the way you see them. And if you feel the President is ignoring Congress and violating the Constitutional duty to inform Congress under these statutes then you'd consider resigning. Is that a fair way of putting it?

Mr. GATES. Yes, sir.

Senator HATCH. Does that kind of summarize it?

Mr. GATES. Well, sir, I woud add that—you know—you take all of these things in the context of the period in which you are working

and the first thing that I tried to establish this morning at perhaps too great a length was my belief that the President has the authority under the Constitution and under the law, the National Security Act, to withold prior notification.

Senator HATCH. He has that authority in certain circumstances, right?

Mr. GATES. That is my view. And that is the view of the Executive branch under two different administrations—a Republican and a Democrat.

Senator HATCH. That's right.

Mr. GATES. But at the same time, it is clear that for the Intelligence Community to serve the President properly it must have a relationship of trust with the Oversight Committees.

Senator HATCH. I agree with that.

Mr. GATES. And for that reason in this current environment, it seems to me—and to recover from this serious problem that we have had, that I want to take on an additional obligation that while protecting the President's authority to withhold, communicates to Congress and to the Oversight Committees my willingness—first of all, my recognition that this relationship has been put in very serious jeopardy by this prolonged withholding——

Senator HATCH. Well, now that's different. In other words, giving political advice that perhaps Congress ought to be told, you know, is a judgment call. All I'm trying to establish is that there are legitimate constitutional reasons why the President may withhold notification under certain cirumstances which can't always be foretold.

Mr. GATES. That's correct. And what I'm trying to establish is that I am prepared, in a personal sense, to take on—to deal with a perhaps lower threshold because of current circumstances that still protects the President——

Senator HATCH. I understand. But are you going to bind yourself in advance to hypothetical situations that you can't contemplate?

Mr. GATES. No, sir. And that's why the words "contemplate resignation" were carefully chosen.

Senator HATCH. That's my understanding. I just want everybody to understand it. That you have a constitutional duty to the President, too.

Mr. GATES. Yes, sir.

Senator HATCH. And that duty may say, I agree with you sir, the Congress shouldn't be notified under these circumstances and a reasonable time might be more than 4 or 5 days. Is that right?

Mr. GATES. Yes, sir. It might.

Senator HATCH. In fact, it might be more than months, but you don't know, because you don't know what kind of a problem is going to arise in the future. And I will distinguish any future problem from the present Iran problem.

Mr. GATES. Yes, sir. But if it did involve a period of months, then I would have serious reservations.

Senator HATCH. Well, now let me just go a bit further. Under Executive Order 12333, and the legal requirements for a Presidential Finding with regard to covert activity, and it's made applicable to all U.S. covert activity, regardless of the U.S. entity to carry them out under the Hughes-Ryan Amendment, as I understand them,

nevertheless, the President could fail or refuse to issue a Finding to authorize operations if it's somebody other than the CIA? Is that correct?

He can violate his own Executive Order, or he doesn't even have to violate it. If he wants to issue a Finding that involves authorizing operations to other agencies other than CIA, even though it violates his own Executive Order, he has the authority to do that under the Hughes-Ryan.

Mr. GATES. I would have to defer to Counsel on that.

Senator HATCH. All right. I don't mean to put you on the spot on that, but I believe you will find that's the case.

Now do you agree that a verbal Finding can also be as valid as a written Finding?

Mr. GATES. I am told by our Counsel at the Agency—attorneys at the Agency, that there is a strong legal case that can be made for that. I would say, though, that——

Senator HATCH. It's better to have a written Finding?

Mr. GATES. From my standpoint, I would not proceed on the basis of an oral Finding. If it were an urgent matter requiring instant action, I would be willing to accept an oral direction from the President. But I would want to follow it up almost immediately with a written confirmation.

Senator HATCH. Now I can't blame my colleagues for putting you on the spot in wanting you to notify the Congress no matter what happens. There is a natural nosy need to know up here. And we have our noses into everything if we can. And with good cause. We've seen some things go wrong. On the other hand, I think you ought to be careful—and I think you have been—in allowing yourself to be placed in a position where you agree everything ought to be brought up here when in fact there are constitutional circumstances at times when things should not be brought up here or may not be brought up here or wisely could not be brought up here.

So I just suggest that to you and I think people in the community and the public in general ought to understand that. The President does have some authority. Congress just can't order you or the President around just because the Senate has confirmation rights. And I just wanted to make that clear. I want to thank you for your candid answers, and I think that you have made this very clear.

Mr. GATES. Thank you.

Senator HATCH. Thank you, Mr. Chairman.

Chairman BOREN. Thank you, Senator Hatch. We're going to have to stand in recess for just 2 or 3 minutes. There's a vote on the Senate floor. As soon as Members return who have gone over to cast their votes, the Vice Chairman will proceed with the questioning. So if we could stand at ease for just a moment, we will resume in 2 or 3 minutes.

[A recess was taken from 2:54 p.m. until 2:58 p.m.]

Senator NUNN. Mr. Gates, the vote is continuing and some of the Senators are coming back. I'm running between the Armed Services Committee where we have the Secretary of Defense and this hearing, so I did want to have a chance to go ahead ask you a couple of questions.

You refer in your statement to the law requiring notification of any illegal intelligence activities to the Congress and you also refer

to the requirement that you report to the Intelligence Oversight Board any intelligence activities that you have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. So you have one requirement of law to report any illegal intelligence activities to the Congress. Is that correct?

Mr. GATES. Yes, sir.

Senator NUNN. To the Oversight Committees. And you have another requirement by Executive Order to report to the Attorney General possible violations of federal criminal law and to report to the Intelligence Oversight Board any intelligence activities that you have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. Is that correct?

Mr. GATES. Yes, sir.

Senator NUNN. Mr. Gates, in your prepared testimony in answer to this Committee's questions, you named a number of red flags that you and Director Casey really came upon as I reconstructed your testimony. I would like to go through that list very briefly. On October 15, 1986, you and Director Casey met with Admiral Poindexter to give him the NIO's memorandum and told him, "The project was out of control and should be made public." If I'm wrong in any of these, stop me.

You and the Director also suggested that Admiral Poindexter consult with the White House Counsel, "to ensure that all of the NSC activities were proper." That same day, October 15, you called the CIA General Counsel and asked him to look into the possible diversion of Iranian money to, "ensure that all of the CIA's activities were legal and proper." You subsequently learned that the Director had told Admiral Poindexter that Lieutenant Colonel North should get legal counsel.

I don't believe you were there for that meeting. But you learned that at a later point.

On November 6, 1986, you and Director Casey again urged Admiral Poindexter to have White House Counsel review the whole Iranian project. And at that same meeting, you again urged that a public accounting of the entire matter be made.

It seems to me, just looking at that array of red flags that you and Director Casey raised, that at some point you would have felt some obligation to report first to the Congressional Committees possible illegal intelligence activities. Or, second, certainly to report to the Intelligence Oversight Board, which is a broader requirement, on any intelligence activities you have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive.

Does it occur to you that all these things added together should have given you some signal that the law or the Executive Order, or both, have been violated and that you had some reporting obligations?

Mr. GATES. Well, first of all, there was no indication or evidence that there were any illegal intelligence activities. Our concerns, particularly with the reference to the operation being out of control primarily had to do with the operational security of the activity, not necessarily its legality. And the question of counsel, I think, was raised in the context of these private investors who were unhappy. There was no indication at any point in any of this that

there was wrongdoing or illegality or that American officials or American government institutions were involved.

So, the thing that——

Senator NUNN. Well, when you tell Oliver North, or the Director does, to go get a lawyer, it seems to me you think something's wrong.

Mr. GATES. Well——

Senator NUNN. You think either there's civil problem or a criminal problem. I can't fathom telling someone to go get a lawyer but not believing there's any problem.

Mr. GATES. Well, again, I wasn't there for that. And I don't know, as I indicated in my answer to the question whether the Director was simply making another pitch that they both ought to have the White House Counsel review it or whether he was suggesting something more. Not being there, I just don't know. And I didn't hear about it until later.

Senator NUNN. All right. Let's take your answer as you give it now. Would you say that up to now, you still feel the same way? If none of this had come out, but if you knew everything that has since come out; you had your present state of knowledge but nobody else in the Congress or no one in the Intelligence Oversight Board knew anything about it, based on what you know right now, would you feel any obligation to notify either the Oversight Committees of the Congress or the Intelligence Oversight Board that there was a problem under the law or the Executive Order?

Mr. GATES. Well, I think having found out a good deal or at least reading a great deal in the newspapers about the funding mechanisms that were being used by the NSC, knowing that now, I probably would feel more of a compunction to seek advice.

Part of the problem that the Director and I——

Senator NUNN. But you haven't answered the question yet. You said you would feel more of a compunction but that doesn't get to the bottom line. Would you or would you not, at this stage based on your present knowledge, feel that you have an obligation to report to the Congress? That's the first question.

Mr. GATES. No, I would not feel an obligation to report any illegal intelligence activity because there has been no indication of any illegal intelligence activity.

Senator NUNN. What is an intelligence activity? Does that include what Oliver North does in the White House basement?

Mr. GATES. It seems to me that it covers the activities undertaken by CIA or another intelligence agency under the Finding.

Senator NUNN. So you do not consider the National Security Council as being under that directive?

If you found out the National Security Council was conducting a patently illegal activity, you would feel no compunction under the present law to report that to the Oversight Committees?

Mr. GATES. My first obligation, it seems to me, would be to report it to the Attorney General because of uncertainty about whether the NSC—my own view has never been that the NSC was an intelligence entity.

Senator NUNN. Well that's the biggest loophole in the law I've ever seen, then. No wonder the Executive branch was conducting everything in the basement of the White House. If you got no com-

punction whatsoever to report what is, without any doubt, an intelligence activity from a Congressional point of view, wherever it's carried out in the Executive branch, but you don't feel you have any obligation under the law, then we got a serious problem in the law. Wouldn't you say?

Mr. GATES. I think that the question——

Senator NUNN. I mean the obvious thing to do is just to shift everything questionable over to the NSC and let her roll.

And you were basically supporting the National Security Council. Your folks were supporting it. I'm astounded that you don't believe that the National Security Council, when they're carrying out what is obviously an intelligence activity, comes under the purview of the law.

Mr. GATES. Senator, it seemed to me that the activity that they were undertaking was primarily a diplomatic initiative for which we were providing operational support.

Senator NUNN. Sending guns, ammunition and TOW missiles to Iran is a diplomatic activity? State Department's going to have to get a different kind of uniform if that's the case.

That's a diplomatic activity?

Mr. GATES. It's an activity that State Department along with the Department of Defense undertakes.

Making arrangements——

Senator NUNN. Running guns covertly to Iran is a diplomatic activity?

Mr. GATES. Well, I wouldn't characterize it that way.

Senator NUNN. Mr. Gates, we can't write a law to cover that. There's no way to draft a law broad enough or tight enough to cover that. Do you want to think through it a minute?

Mr. GATES. Well, I think one of the issues that really remains unanswered is whether the NSC is regarded as an intelligence entity. I mean, my point is——

Senator NUNN. Well, what about the Defense Intelligence Agency? Do you call them an intelligence entity?

Mr. GATES. Yes sir.

Senator NUNN. What is your definition of an intelligence entity?

Mr. GATES. One of the intelligence organizations of the Executive branch.

Senator NUNN. So what you're telling us is we can't rely on you as Director of the Central Intelligence Agency under the existing law to tell us anything that's illegal going on in the National Security Council, even when it comes to your attention? That's what you're saying?

Mr. GATES. Well, that's not what I intend to say.

Senator NUNN. It doesn't sound good, but that's what you are saying. Correct?

Mr. GATES. I would bring illegal activity that I thought impinged on intelligence activities even if it were not an intelligence entity or whatever to the attention——

Senator NUNN. But you've already testified that you objected to the sending of intelligence to Iran and you testified, I believe, this morning, I didn't hear all of it, that you would have advised against the selling of arms to Iran. And you got involved in the

Finding. You all asked for the Finding and you're saying that none of this impinged on intelligence activities?

Mr. GATES. When Senator Cohen asked the question this morning, he was positing a series of questions in terms of given the information about the people who were involved, some of the private people who were involved, and so on. It was under the specific conditions that he suggested that I indicated I would have opposed this activity. And going back to the question that you're asking me, it seems to me, I would consider that I have an obligation if there is an illegal activity, in association with an intelligence activity, to bring that to your attention as well as the Attorney General's.

Senator NUNN. Why do you have a Finding if there's not an intelligence activity involved?

Mr. GATES. Well, that's what I'm just saying. That because there is an intelligence association with it, that I would inform.

Senator NUNN. My time's expired. But I would hope you would think through your answers and perhaps amend them as we go along here because it seems to me that what you're basically saying is we've got no hope of getting appropriate oversight in this Committee because of your very narrow interpretation of your duty.

Senator COHEN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Gates, I am concerned about what I see as a shift in your testimony in tone and substance between the written answers you submitted today and what you testified to, contrasted with what you testified to back on December 4, before this Committee. When you testified before us on December 4 for about 4 hours, there was never any statement on your part about any informal division of labor between you and Mr. Casey, and the thrust of your testimony on this issue of diversion seems to me to be significantly different from what you have testified here today. Let me be specific.

Senator Cohen this morning asked you about the delay in acting after being informed on October 1, about a possible diversion of funds to the Contras. You said that there was no sense of urgency, and that is the reason you didn't act. But, in your testimony on December 4, when perhaps you weren't quite as well focused on a confirmation proceeding, you testified that you were startled. Specifically the context was that Mr. Allen came to see you and briefed you on a series of problems relating to the project. He had come to the analytical judgment that he thought some of the money was being diverted to other U.S. projects, U.S. sponsored projects, including the Contras—that was your testimony on December 4.

Then Senator Bentsen said what was the date of that. Mr. Gates: October 1st. And Mr. Gates continues, "I was startled by what he told me. And frankly, consonant with the way we had responded to such stories in the past, my first reaction was to tell Mr. Allen that I didn't want to hear any more about it, and I didn't want to hear anything about funding the Contras."

And a little bit farther in your testimony of December 4th you said, we made an appointment that intervening weekend—it was Wednesday or Thursday. We arranged to see the Director on the 7th of October, "and the Director was as startled as I was."

Now, in the context of your testimony on December 4th, Mr. Gates, that you were startled, why didn't you do something more about it. For example, why didn't you see to it that it was in Director Casey's testimony when he appeared before this Committee on November 21st?

Mr. GATES. I was startled, primarily, Senator, by the threat to the operational security of the activity. This was the first I had heard of the involvement of these private investors and this other activity that had taken place, and it was that as much as anything that had startled me. And I think that may have been what startled the Director as well.

Again, as I indicated this morning, I did not insist on having this information included in the testimony of the Director, which I did not draft, but as I say, I did read an early draft of——

Senator SPECTER. But you had reviewed the testimony?

Mr. GATES. Yes, sir.

Senator SPECTER. And you knew that his testimony in fact did not say or raise any issue about diversion to the Contras.

Mr. GATES. That's correct, sir. And I told him—I'm sorry. As I said this morning, I did not feel that the speculation that we had, that on the 1st of October warranted raising the matter in the hearing. We were basically trying to get the facts out in terms of the Agency's part in the Iran arms affair to begin with.

Senator SPECTER. Mr. Gates, before we come to the issue as to whether it was a speculation or a judgment—because I think there is a big difference—I don't want to leave too quickly the business about whether you thought it was important.

It seems to me that when you say that you were startled, and you say Mr. Casey was startled, you're using very strong language to say that it is important. But that is directly inconsistent with what you said to Senator Cohen this morning that there was no sense of urgency about it. And it seems to me that if the matter is startling, is important, it is something that you pursue.

That raises the question that Senator Cohen started this morning of why you didn't pursue it?

Mr. GATES. Senator, I did pursue it in the sense that I told—told the NIO that we ought to get this information to the Director and when he briefed the Director, he directed that this memorandum be prepared, and we then took that to the NSC. So we did pursue it.

Senator SPECTER. Well, it—it doesn't seem to me that you pursued it with the sense of urgency that was required on something that was startling.

But let me go on to this word speculated, which you have used, really repeatedly here. It originates in your written answers to some questions which the Committee submitted to you. Here again, I express a concern about a calculation on a selection of a word which I think is at variance with what you testified to on December 4, when you were talking about what Mr. Allen had told you when he came to you. There was a statement which I cannot go into now which was the basis for what Allen had said: But, the conclusion was, "he had come to the analytical judgment that he thought some of the money was being diverted to other U.S. projects, U.S. sponsored projects including the Contras."

Now, I think that an analytical judgment based upon what you testified Mr. Allen has before him is significantly different from a speculation, isn't it?

Mr. GATES. No, sir, I don't think so. Because what he made clear to me—again, the primary thrust of his concerns and of his briefing and of the memorandum that he wrote as well—this memorandum, seven pages long with one sentence on the possibility of a diversion, attributed to the views or what the Iranian intermediary might say if he decided to go public in his anger over not being paid. So this was a highly questionable source in my view. Mr. Allen made very clear to me when he came to see me that on the one hand he had some indications from intelligence information that there had been overcharging and perhaps some cheating, and we had been getting that kind of information for several months and did not consider it particularly unusual in an international arms deal, as people with the intermediaries.

And on the other hand, he saw some of the same private individuals involved in both the Iranian affair and in the private funding for the Contras. Now, what he brought to me was no connective tissue between those, no indication that there was anything between those. He said that the juxtaposition of those two things raised the possibility in his mind that there might be some diversion going on. And it was at that point that I said well, along with the operational security problems, we ought to bring that to the attention of the Director. But in my judgment it seemed to me that the two things that he had were of concern, that they gave an appearance that didn't look entirely right, that the arrangements that the NSC might have might be not improper, necessarily, but not very smart in terms of appearances, and that maybe that ought to be brought to the attention of the Director and ultimately to the NSC itself. But we had no indication of any connection between those things. He did not bring that to me.

Senator SPECTER. Mr. Gates, it was more than what Mr. Allen said. It was also what Lieutenant Colonel North said. You testified on page 20, "North made a very cryptic reference to the Swiss bank account and money for the Contras. Casey and I did not pursue this." Then a little later you say that you had made an inquiry and had found in some sort of a conclusory fashion that the CIA was completely clean. And the matter picks up a few pages later, on page 28 of the record, where you say, "We didn't want to ask him factual questions about what he was doing with the funds." Senator Cohen asks you why—I had alluded to this earlier today—and your answer was because we knew he was involved or we assumed, I should say, I assumed he was involved in efforts by involving private benefactors to get money for the Contras. This was one of those areas where we did not pursue obvious lines of questioning because we didn't want to get involved in knowing about the source of the funding.

Now, if you take what Mr. Allen says and you take what Lieutenant Colonel North says—and I am aware of your answer about the GS-12's and 13's not understanding—but you are the Deputy Director of the Central Intelligence Agency. Why don't you pursue the matter to see if there is impropriety or illegality here?

Mr. GATES. Senator, the context of the remark on the 9th, as I have reconstructed the conversation, as I have thought about it, as I indicated in my answer to the question this morning, was in the context of the discussion of the downing of the private benefactor plane in Nicaragua, not in the discussion about Iran. It was strictly in the context of Central American activities.

Now, I did not say that in December in part because I had been focused on preparing Mr. Casey's testimony in December, and had less than 24 hours advance notice of the hearing in which I was to testify for 4 hours. So I had no prepared text, and very little time to think about the questions that had been posed to me—that were going to be posed to me by the Committee as to my own role in this affair.

So while I don't think there is a material difference in what I have answered in answer to the questions of the Committee this morning, the written questions, or what I have said in answer to other questions subsequently, and my testimony on the 4th, there clearly is more detail and more information. But the comment on the 9th, as I recall it, was strictly in the context of the downing of the plan that Mr. Hasenfus was on.

You know, I might just say, Senator, I——

Senator SPECTER. Well, that's wasn't your testimony, Mr. Gates. We're talking here about the sale of arms to Iran; that is the subject matter before the Committee. Nobody is talking about Hasenfus at this point. We're talking about diversion of funds. And you testify here that Lieutenant Colonel North raises this issue about funds going to the Contras, and it is clearly in the context of funds coming from the sale of arms to Iran.

Mr. GATES. When I testified in December, I had had very little time to think about my own participation in this, or the events that had led up to that. And it was only in retrospect and looking at the calendar and seeing the juxtaposition of events, that I realized that that part of the conversation had been in the context of our discussion of Hasenfus, the same part of the conversation where I got the assurance that CIA was completely clean. The discussion of the Contra—of the Swiss accounts, or the comment about Swiss accounts and the Contras was in the context in which I was asking whether CIA was completely clean, and that had to do with a discussion stemming from the downing of the plane that Mr. Hasenfus was on.

Senator SPECTER. Mr. Gates, would you consider that you had a duty to inform the Intelligence Committee if Director Casey had assured this Intelligence Committee that all the funding from Iran, the sale of arms to Iran, was properly accounted for? Let me repeat that question for you. Would you consider that you had a duty to inform this Intelligence Committee if Director Casey had assured this Intelligence Committee that all the funding from the sale of arms to Iran was properly accounted for in the Swiss bank accounts——

Mr. GATES. If he had assured you it was properly accounted for?

Senator SPECTER. Yes.

Mr. GATES. Because that would be consistent with my own knowledge, no, sir. If he had testified that it were properly accounted for.

Senator SPECTER. Well, was it consistent with your own knowledge that it was properly accounted for; that is, contrasted with what you had heard at least from Allen about a diversion to the Contras?

Mr. GATES. But there was no indication in what Allen told me whatsoever that any of that had come out of CIA funds or anything in which the CIA had had any involvement.

Senator SPECTER. Well, it was supposed to have come from the funds of sale of arms to Iran. Doesn't this really involve, Mr. Gates, precisely what you were talking about earlier about whether we have to extract bicuspids, whether we have to ask exactly the precise question so that when Mr. Casey appears before the Intelligence Committee and says all of the funds from the sale of arms to Iran are properly accounted for, and there are these indications that you have seen from Allen about a diversion of funds to the Contras, that you have what Lieutenant Colonel North says about diversion of funds, which you may have juxtaposed in a different way, that when Mr. Casey comes to this Committee on November 21, and testifies about this transaction, don't you as his deputy, someone who has reviewed the testimony, have a positive, affirmative duty to tell this Committee that there may be a problem with those funds and that some may have been diverted to the Contras?

Mr. GATES. There wasn't any indication of a problem with that. And I believe that we had checked before he came up here to testify that that was the case, Senator.

Senator SPECTER. Well, it seems to me, Mr. Gates, there's an indication there was a problem with that. If you have what Allen says and you have what North says, and that is not a problem, and it startles you, and these are things that you want to call to the attention of Admiral Poindexter, isn't that enough of an indication to call it to this Committee?

Mr. GATES. No, sir, because again the problem, first of all, was, as best we could tell, an operational security problem. Second, all we had was this one statement by Allen on the 1st of October, and third, during October and November, we still had a Presidential directive not to inform the Committee.

You know, it may be worth saying here, I have already acknowledged one of the things that I would do differently if we had it all to do over again is the issue of returning to the Committee—or returning to the President to seek reconsideration of the lack of prior notification. That is something we should have done better.

There are perhaps things that during this period, as one might look back, that one might have done or not done better. But it seems to me that in terms of the basic question that you are considering, the real issue it seems to me is that when Allen came to me on the 1st of October with this speculation, thin as it was, as well as this talk about the operational security problem, I didn't sit on that. I didn't tell Allen to go away and come back to me when he had something more concrete. I said let's move it to the next level of responsibility. Let's get it to the Director, let's find out if he knows more about this. And when he got it and he directed that the memorandum be prepared, it was I who insisted that we take that down to Poindexter and make him aware of this very tentative speculation and the concerns about operational security. At

each stage it seems to me, that my instinct was not to sit on it, not to try to make it go away, but rather to move it to the next level of responsibility and the next level of knowledgeability, to get it to people who had some idea on which they could evaluate the information. We had no basis on which to evaluate this, because we knew there were large elements of the financial arrangements that we didn't know anything about.

But it seems to me that the decision beginning on the 1st to try to move it to levels to find out more to see what was going on, maybe I could have done more in that regard. But the things that I did were in the context of trying to get it in front of people who were in a better position to judge whether there was a serious problem or not. And I believe that the actions that I have taken during the period that I have been Acting Director with respect to Central America and the Costa Rican problem, for example, in terms of bringing that information to the Committee immediately upon learning it myself and moving it to the Committee is an indication of the approach that I have to these things. I did not sit on that information in early October.

Senator SPECTER. Mr. Gates, we are going to have to return to this because of the time strictures, but I do not agree with you. When you talk about October 1st and no sense of urgency, to October 6, and then you talk about October 15th and what was done with Poindexter, and then you talk about Furmark which we haven't had a chance to come to in this round of questioning, and you have these indications and you have your review as the Deputy for Mr. Casey of his testimony on November 21st, and he gives assurances to this Committee where there is a lot of smoke, I just can't agree with you. But I will pick up the specific factual matters on the next round.

Thank you, Mr. Chairman.

Chairman BOREN. Senator Warner is in the midst of an important meeting in the Armed Services Committee. Senator Metzenbaum and Senator DeConcini have kindly agreed to let him go out of order and ask those questions and then we will get back to our order.

Senator WARNER. Mr. Chairman, I thank my colleagues and I will be very brief.

Mr. Gates, in your opening statements, quite understandably and justifiably, you were very praiseworthy of Mr. Casey. I presume you had a close personal and professional working relationship. Is that correct?

Mr. GATES. It was primarily a close professional relationship.

Senator WARNER. Professional. And under the law, Section 102 of the National Security Act, which defines the responsibility of the Director and the Deputy, it states that you shall "act for and exercise the powers of the Director during his absence or disability," which implies that he shared knowledge at all levels in your work together. Would that be correct?

Mr. GATES. Yes, sir, in a broad sense. I would assume not every detail.

Senator WARNER. But if you were going to act in his absence, it would seem to me that he would have to impart to you a full range of knowledge for you to be effective.

Mr. Carter. Well, I certainly was aware of the activities of the Agency in various covert actions and various other Agency activities.

Senator Wicker. Well, that leads me back to my previous question—whether we'll have the benefit of Mr. Clark's testimony again tomorrow to be sure, but at the heart of this issue is whether or not Mr. Casey did at some point in time discuss the Contra issue with the President. Do you have any knowledge that he did—actual knowledge—or implied knowledge, and if so, in what time frame?

Mr. Carter. I do not know. This is one area where the Director did not, I believe, share everything with me. When he would meet with the President or with other senior government officials privately, there were often occasions, I think, that I did not get briefed on what had transpired.

Senator Wicker. And, therefore, if he had you have no knowledge of this having occurred?

Mr. Carter. That's correct.

Senator Wicker. Now turning to the line of questioning by the Senator from Pennsylvania, in which you mentioned you were "startled" by Mr. Allen's briefing on October 1. Was that because this development in the Iran Program, which threatened to compromise its security, could have been an intelligence failure?

Mr. Carter. No, sir. I don't think so. It was, I think, the thing that I heard starting as much as anything—the information about the role of private investors.

Senator Wicker. Did it really to you that there could be some breakdown in the operation? That there could be a failure of the program as you understood it?

Mr. Carter. There was no indication in what the NSC said to me or in my perception of the situation that there was a problem in CIA's role.

Senator Wicker. And what about your subsequent conversations with Colonel North? And then later the information you received from the Director about certain telephone calls from Fortuno? At some point in time did you become concerned that this thing could be tantamount to a failure?

Mr. Carter. From an intelligence standpoint—from the standpoint of our role in it, I don't believe that I really ever contemplated that there were failures—or nothing came to my attention that would suggest failures in our participation.

Senator Wicker. I address that question because again Section 501 of the Intelligence Oversight Act cites in paragraph 1 that you have an obligation to report in a timely fashion to the Intelligence Committees any illegal intelligence activity or "significant intelligence failure." And in your judgment the facts during that time frame did not add up to a potential intelligence failure?

Mr. Carter. No, sir.

Senator Wicker. Also, under the Executive Order there's a responsibility to make certain reports to the Attorney General. It read: "senior officials of the Intelligence Community, the heads of departments and agencies with organizations in the Intelligence Community shall so report to the Attorney General possible violations of Federal criminal laws by employees." So you take it your

consideration of these facts did you think they were tantamount to "a possible violation" of the Federal law?

Mr. GATES. No, sir. Nothing was brought to my attention that would have indicated that.

Senator WARNER. In other words, you made a judgment call based on the facts that there was not even the possibility of a violation to Federal law.

Mr. GATES. There was no indication in the information and speculation that Allen gave to me on the first that would have indicated that.

Senator WARNER. What about your subsequent conversations with Colonel North, and as the matter unfolded, with the conversation between the Director and Furmark?

Mr. GATES. Well, there was nothing that would have suggested it in the conversation with North. The only comment about the Furmark conversations that the Director made to me was after the 7th—on the 7th telling me about Furmark's concern about the operational security because of the problems with the private investors. Again, no indication of illegality there. I did not learn of the later concerns expressed by the businessman until late in November.

Senator WARNER. Thank you, Mr. Chairman.

Chairman BOREN. Senator Metzenbaum. We welcome you to the Committee. This is Senator Metzenbaum's first day as a member of this Committee, and we recognize you now for your questions.

Senator METZENBAUM. I guess the timing could hardly be more apt. I think I was officially appointed to this Committee about 10 or 15 minutes ago, although it had been in the works. But, I'm very happy to serve on this Committee, to work with you, Mr. Chairman, the Vice Chairman and the other distinguished colleagues, and I'm looking forward to it. I don't claim to be nearly as knowledgeable as some who have sat on this Committee for some time, but I certainly have a strong interest in the subjects that have come within purview of this Committee.

Chairman BOREN. Glad to have you.

Senator METZENBAUM. Mr. Gates, as I just indicated, I'm a complete newcomer on this Committee, and I join the Committee with little specific knowledge about the whole Iran affair except what I've read in the newspapers, but I do have a great concern about the activities that come within your purview at the present time, and conceivably in your purview assuming you are confirmed.

As I sat here, and heard your testimony, I had some concerns because most of your testimony has centered on how little you and your agency knew in November. I guess the question that's bothering me is why did you and Mr. Casey go along with an operation that involved your Agency so much, but deprived it of vital information about what was going on? Why did you not push for more information?

Mr. GATES. Senator, I indicated this morning in my testimony that I considered our participation in an operation in which there were large parts unknown to us and in which we mistrusted key players to have been one of the Agency's most serious shortcomings in this entire affair, and, I think, one of the most important lessons we have learned.

Again, it goes back to an answer to an earlier question. I think, leaving the legalities aside, that most of the people in our Agency considered that we were providing—most of the people who were involved—considered that we were providing limited logistical support to an NSC initiative. And I think that in that context that there was an acceptance perhaps of arrangements that under other circumstances in an operation in which we had a much broader role, we wouldn't have accepted. I think the fact that the NSC was directing this affair, was in the lead, led our people to accept ground rules that otherwise they wouldn't have. I think that, as I say, one of the most important lessons we've learned out of all of this is that we will not let ourselves be put in that position again.

Senator METZENBAUM. If you had it to do over again, in what manner would you have changed your conduct as the Deputy Director and the senior professional in the CIA?

Mr. GATES. I think that the one thing that for sure I would do differently is that I would have pressed beginning fairly early on for a reversal of the decision to withhold prior notification, after I became Deputy Director. I think that that's one thing I'd have changed. And one of the things as I've thought about the problems inherent in some of the questions that Senator Specter has asked and some of the others in terms of the activities of October-November, when I think about the kind of information that we had, this speculation from the NIO, I could have ordered an audit of CIA's accounts, but the fact is that account would have been a dry well. We would have learned that our accounts were exactly right, because that's what the investigations have shown, both our own and the external accounts, that there had been no problem with our accounts. That none of the money had passed through, none of this extra money had passed through our hands and so on. So an audit might have looked better on the record for this hearing but it would not have accomplished anything in terms of trying to get further information about what was going on. So, I suppose there are some things that I might have done in October/November that I didn't. Frankly, I'm hardpressed to find them based on the information that was available. But I do strongly believe that one of the most important lessons learned and one of the mistakes that we made was not revisiting the withholding of prior notifications, the withholding of notification.

Senator METZENBAUM. I didn't get that last answer—one of the what?

Mr. GATES. That the biggest mistake that we made was not causing the decision about withholding notification of the Congress to be revisited and reversed.

Senator METZENBAUM. And reversed?

Mr. GATES. Yes sir.

Senator METZENBAUM. Is there any good reason other than terrible urgency for not giving at least the leadership of this Committee prior notice of every covert action?

Mr. GATES. Well Senator, as we discussed this morning I believe that based on the legislative history, the President has the constitutional authority to withhold prior notification if he deems it appropriate. And I think that that is recognized in Section 501(b) of the National Security Act. Then it becomes a question of the rela-

tionship between the President and the Congress, and the Intelligence Community in the Congress, and I think there, as I indicated to Senator Bentsen this morning, my view is that I would not recommend withholding prior notification to the Congress, to the Intelligence Committees, to the President, except in the most rare and extreme of circumstances involving a life and death matter and then only for a matter of several days.

Senator METZENBAUM. And if that notice were withheld, notwithstanding your recommendation, what would you then do?

Mr. GATES. I would not be disloyal or insubordinate to the President. If I felt that the withholding and the arrangements were such that it threatened the relationship between the Intelligence Community, between CIA, and the Intelligence Committees of the Congress I would contemplate resignation.

Senator METZENBAUM. Would you resign, or just contemplate it?

Mr. GATES. I think it would depend on the specific circumstances, Senator. I can't, I don't think it would be appropriate for me to commit in advance that I would automatically resign any time the President withheld prior notification more than several days. Again, I think that the fact that this law has been applied only once, or that this prior withholding has been withheld only once since passage of the law in 1980, and given the consequences of that withholding, frankly, I think that future Presidents are going to be very conservative about any possible application.

Senator METZENBAUM. Well, Congress keeps trying to promote a responsible policy process in this area, with responsible oversight. But the White House and the CIA at times seem just unable to restrain themselves. We've gone through, just in recent years, the harbor mining incident, the guerrilla manual, the Iran arms sale program, and the reported involvement of at least one CIA officer in improper support to the Contras. What can this Committee, or should this Committee, do to guard against future incidents like these? Should we, or do we have to, refine the laws in order to be able to get the information to which we think we're entitled?

Mr. GATES. Well Senator, I think that you have mentioned some areas that have created conflict between the Committees and the Intelligence Community. There is considerable controversy over the question of whether there was notification on the mining. The House Committee, my understanding is, recognizes or acknowledges that it was informed and there is information on the record that would suggest that the Senate Committee was informed as well. But that is a matter of controversy. In terms of our day to day dealings, I think that it's worth noting we have had these sensational differences between us. I think it's worth noting in terms of providing information to the Committees and to the Congress and so forth that last year alone, just CIA and the Intelligence Community provided sixteen hundred briefings here on the Hill. So there is not a reluctance to provide information. I think that there is a constitutional question involving the President's—there is a constitutional issue in terms of the President's authority to withhold. But my view is that with the proper—with a relationship of trust between the Community and the Oversight Committees, that there should not be any future problem about this kind of relationship.

Senator METZENBAUM. I must excuse myself, there is a vote, and I have about 2 minutes. Thank you.

Senator COHEN. Senator Cranston, would you care to proceed?

Senator CRANSTON. Yes, I yield my time to Senator Bradley.

Senator COHEN. Ordinarily we would not entertain such a motion. Senator Bradley——

Senator BRADLEY. Mr. Chairman, or Mr. Acting, or I'm the Chairman. What am I talking about? [Laughter.]

Senator COHEN. No the Vice Chairman is in power in this case.

Senator BRADLEY. How should we proceed?

Senator COHEN. As a matter of fact I'd like to proceed for about the next 10 minutes and then when Senator Boren comes back, yield to you. A couple of questions, Mr. Gates. When you say that Col. North told you the CIA was completely clean, that is not exactly true is it? I mean you found out later that was not exactly true since there was an operative in Costa Rica who had less than clean hands in this entire matter.

Mr. GATES. That appears to be the case, yes, sir.

Senator COHEN. Second, you said you were satisfied the accounting procedures in the CIA would catch any improprieties. That's not exactly correct because there was a commingling of funds that you were not aware of until such time as the investigation began. So during this entire time, you had assumed that there would be complete financial integrity in terms of the accounting procedures, because of the strict accounting audit procedures you've had in the CIA. But during that period of time, you were totally unaware there had been a commingling of funds in the CIA account and other accounts?

Mr. GATES. While there was as commingling of funds there was still complete accountability of the monies in that account.

Senator COHEN. I understand that, but nonetheless it would not be appropriate ordinarily to commingle funds from one program and another.

Mr. GATES. That would just be a questionable tradecraft practice rather than an impropriety.

Senator COHEN. Let me say something now. Unfortunately my colleagues are not here, but there seems to have been some concern expressed by a number of individuals about your actions and activities. Let me just give you the benefit of my advice sitting back here looking down. You are number one, an ambitious young man, type A personality I assume, climbing a ladder of professional success. That's not an affliction that's unknown to members of the Senate, and indeed members of this Committee. And as a matter of fact, once you were sworn in you essentially became the new kid on the block. You didn't conceive this Iran program, you didn't conceive of the whole funding mechanism for the Contras, you didn't know the details. Moreover, you didn't want to know the details. You basically didn't want to rock the boat. Isn't that essentially the problem we have here. We can go through all the constructions and rationalizations now, but basically you're the new guy on the block, you're under Director Casey, a strong personality, you've just been sworn in, the program has been in operation for several months. You might question the wisdom of it, but its not your bailiwick, you don't know the details, don't want to know the details, and ba-

sically you're not prepared to lay your career on the line for a program that you didn't have much involvement with. Isn't that essentially what is involved in all the questions people ask you about when you'd resign and under what circumstances. You basically, I mean as a practical matter, were not prepared to resign over a matter you didn't create, initiate, fully understand the details of, or want to know the details of. Isn't that essentially it?

Mr. GATES. Well, I think that its important to add the perspective that particularly with respect to the period from when I became Director until—or Deputy Director, until late in the fall, that while this was a risky operation, there was no reason to quarrel with it.

Senator COHEN. Wait, stop. Stop. Of course there were reasons tc quarrel with it. I went through——

Mr. GATES. It was a policy judgment, Senator.

Senator COHEN. No, no. The reason I went through the question I did this morning was to lay out the kind of conditions that, had you been a Director at that point, what were the factors that you would have considered. Obviously, if you were the Director at that time, and had access to information, you would have wanted to know who is Mr. Ghorbanifar? What is his reputation? What are his past activities? What relationship do we have with him? Is he a reliable individual? Is he somebody we should entrust the mechanism to, in achieving our desired goals? You would have wanted to know about that. You would have wanted to know whether there was a separate intelligence analysis of what was going on with respect to Iranian factions or moderates in Iran at that time, and not simply rely upon Israeli intelligence sources. You indicated that and I agreed with that. You would probably have raised some doubts about the way in which it was going to be financed through middlemen, during the course of it, and the arms merchants and all the shady characters that one has to come in contact with. You might have raised concerns about individuals who were operating on the Iranian level and the Contras as well. General Secord by way of example. So all of those factors, I think you would have taken into account and that's why you said you would have recommended against it, at the time it was conceived.

Basically what happened was that a program was started by other people on which you didn't have very much information initially; had even less I suppose as it went on. But basically it was not your recommendation. And you didn't want to throw your career down the drain over a program you didn't start, didn't know much about, and weren't prepared to sacrifice for. I mean isn't that essentially what happened? I mean I don't fault you for that, I don't fault you for that. Some might take a much more moral position and say under any circumstances, any knowledge, any information you had, that is grounds enough for you to become before the Committee, throw your career on the line, and say that I'm going over the heads of Casey and the President of the United States. I'm not quite so quick to rush to that judgment. I'm just trying to put your candidacy and nomination in a kind of perspective so you don't get caught in a crossfire that you're finding yourself in right now, between Senator Bradley or Senator Nunn and

Senator Specter and others who are asking legitimate questions. It won't stand up under the analysis.

And what really happened, I think, was the fact that you were simply in a position and you didn't want to take the kind of action that some of us are suggesting that you should have taken had you been Director of the CIA. Had you been Director of the CIA, I doubt very much whether we would have had this kind of a program proposed by the Agency.

It's clear to me now, for example, that Director Casey was in favor of it. We know that. The question is why? Why was he in favor given all the factors I mentioned before, the unreliability of Ghorbanifar, the fact that we didn't have an independent intelligence analysis, the fact that we were dealing with middlemen, and arms dealers and so forth. Why was he in favor? There were reasons why. But I just don't want to see you unless you feel committed to pursuing your responses to these lines of questioning trying to construct rationales which simply don't hold up. And that's why I'd like for you to consider that. Senator Nunn suggested you rethink your, some of your answers overnight. I think it's pretty good advice, frankly, because I think I appreciate the circumstances you find yourself in.

One of the reasons that I was disturbed during last December, the kind of questions, why didn't anybody want to know? No one wanted to know what was going on. Didn't want to know about the transfer; that was somebody else, that was Ollie North. Didn't want to know about the financing; that was not our department. NSC is not within the Agency. Everybody was kind of putting up buffers as you said, because we didn't want to get involved. And I would simply—I understand that—but I would simply suggest to you that the responses that you've been giving to these members are not satisfactory, that you ought to at least explain the circumstances you found yourself in as the new Deputy Director who didn't have the initial responsibility and were unwilling to bear this upon your own career for something you didn't conceive of and wouldn't have urged in the first place. It may not satisfy everybody, but I think it makes more sense than what we're doing right now.

Now I'd like to go on and ask you a couple of other questions if I still have any time left. Unless you'd like to respond.

Mr. GATES. Well, my problem is that I understood from the outset that the, let me just say that I thought that the initiative to establish a dialogue with the Iranians made sense.

Senator COHEN. Nobody is going to question this.

Mr. GATES. I also believed as cynical as it may sound that the idea of an exchange of bona fides leading to that dialogue had merit as well.

Senator COHEN. We exchanged bona fides when we lost 241 Marines in Beirut. We didn't have to establish another damn thing in terms of being bona fide.

Mr. GATES. I'm just saying that I understood the thinking that led to that. And it seemed to me that while the entire operation was a very high risk gamble and I did disagree with a lot of the ways in which it was being carried out, that what they were trying to accomplish made sense in terms of opening this dialogue. So

while I had problems with various aspects of the operation, as you suggested, and as my predecessor did in the summer of 1986, this was not an issue apart from the prior notification there were problems.

Senator COHEN. One of the problems I have with your response right now is that you thought it made sense but you didn't know the details. Now, how can you say that this program makes sense if you don't know the details of the operation? You say, as an abstraction of course, that it makes sense to seek whatever opportunities we can inside, that we have to establish a better relationship with whatever factions exist, I don't know of anyone on this Committee that would want to challenge that, they'd actually confirm it. And there's no dispute about trying to get hostages back. But it seems to me before you can put yourself on the line saying I support the concept, you have to know how it's going to be carried out. Does it have a realistic chance, what are the risks involved, who are the people involved, what is the confirmation in the intelligence. You can't just say I support the long-term goal without knowing how it's going to be carried out.

Mr. GATES. I guess the bottom line in response to your comments a few minutes ago, is that while I may be willing to acknowledge that I didn't want to challenge the program, I believe I would have had I become convinced that there was wrongdoing or illegality involved.

Senator COHEN. Let me just take you back one more time. My time is up, and let's go over it one more time. Had you, on December 5, or 6, or 7, 1985, when this entire discussion took place between Bud McFarlane, between John McMahon, between Secretary Weinberger, Secretary Shultz, Donald Regan, President of the United States, had you at that time had in front of you a proposed plan to establish a new strategic dialogue with Iran, there, I assume you would have asked a number of questions. You would have asked whom are we going to deal with? With whom are we going to conduct this operation? How good is our intelligence? Do we have any separate confirmation other than what the Israelis have told us. Do they have a separate agenda? Are their interests identical or intersecting with ours? What are the risks involved of exposure, what are the consequences of exposure? I believe if you went through that particular analysis and you found out about Ghorbanifar, you found out about how the money was going to be handled, you found out that we didn't have the kind of intelligence that we should have, you indicated to me this morning you would have recommended against it. You would have adopted the position that, let's say, John McMahon did——

Mr. GATES. Yes sir.

Senator COHEN [continuing]. And said no, it's a bad idea. Not that the goal wasn't worthy, not that we shouldn't try to establish this, but not under these conditions and not necessarily with arms involved. Because after all that gives us two terrorist policies. After all, it puts Secretary Shultz in a very bad position. He can't very well go out and lecture the French while we're conducting a covert policy achieving the same thing. So I think you said that this morning and I agreed with that.

Mr. GATES. Yes sir.

Senator COHEN. And I don't like to see you now go back and try to reconstruct it saying, had I been in that position I probably would have supported the concept without knowing what the details were. I think you were——

Mr. GATES. Fair enough.

Senator COHEN. My time is up and maybe I'll have a third round. Senator Bradley.

Senator BRADLEY. Thank you very much, Mr. Chairman. Mr. Gates, now on October 1st the National Intelligence Officer for Counterterrorism came to your office and said he was concerned that money from the sale of U.S. arms to Iran was being diverted to other U.S. projects including the Contras. Is that correct?

Mr. GATES. He raised the possibility that that might be happening.

Senator BRADLEY. And, you know this was not just a casual speculation because this individual has been working for several years with Col. North, is that correct?

Mr. GATES. He had been working on terrorism related issues for a couple of years.

Senator BRADLEY. And he had been meeting regularly with Col. North? Is that correct?

Mr. GATES. That's my understanding, yes.

Senator BRADLEY. Now he came to you and conveyed this information to you. Then on October 7, his concerns were reinforced by a separate conversation that Mr. Casey had. Then also on October 9, you've alluded to your conversation with Colonel North in which he mentioned a Swiss bank account and money from the Contras. Now, at this point, my question is: Why didn't you immediately convene an investigation of this?

Mr. GATES. The telephone call from the businessman on the 7th concerned only problems about the operational security. The discussion on the 9th was strictly in the context of the private benefactor airplane that had been shot down in Nicaragua, not in the context of Iran. So I still had only North's comment on the 1st. That said—

Senator BRADLEY. North's comment on the 1st?

Mr. GATES. I'm sorry, the NIO's comment on the 1st.

Senator BRADLEY. I see.

Mr. GATES. On the 15th when I had the NI—when I had the General Counsel's memorandum in hand, I did ask our General Counsel to look into CIA's role to ensure that everything that we were doing was proper.

Senator BRADLEY. Why didn't you say to the NIO for Counterterrorism: "You know, find out everything from your sources and tell me what you think of this. What's the probability that this occurred?" I mean, when he shared this with you, why didn't an electric current go through you and didn't you say: "If this has happened, we have violated the congressional mandate. We're in trouble in Congress. The Intelligence Budget is in trouble because we will have essentially lied to the Congress." Why didn't that happen? Why didn't an electric current go through you at that moment as opposed to your simply saying, "Well, let's just pass it on or ignore it," or "Maybe I'll send a memo to Mr. Casey."

Mr. GATES. I did tell him to get his information together and to fully brief the Director when he could, as soon as he could. I think that the reason that I wasn't more excercised about it—although here I would draw a distinction between something that seemed important and something that was urgent—the reason that I did not push it was because frankly the flimsiness of what he had. He had no connection between these two things that he brought to my attention. Again, we had on the one hand reports of cheating and overcharging that we had been seeing for months, and that are not abnormal in the international arms market and on the other hand he simply called attention to the circumstantial fact that some of the same people were involved in the Iran affair and the Contra thing. And he said maybe there's a possibility there's something going on there. I said, well let's get on, let's get it up and see if we can find out more about it. Let's bring it to the Director's attention, maybe he knows more.

Senator BRADLEY. Well, Mr. Chairman, I understand that the order was violated here: so, I want to come back to this line of questioning because I think its central.

Chairman BOREN. I thank the Senator from New Jersey. With the disruption of the vote, we still have some members of the Committee who have not had an opportunity to ask their first round of questions, so I want to allow them to proceed and then we will come back to the Senator from New Jersey in the second round. At this time I would like to call on Senator DeConcini for his questions.

Senator DECONCINI. Mr. Chairman, thank you, I'm sorry to interrupt the Senator from New Jersey's questions. I know he didn't realize that some of us haven't had a chance. I appreciate the opportunity, Mr. Gates, to question you. We've gone over a multitude of questions involving the Iran/Contra affair and I want to address a couple of other areas, at least one in particular. The Washington Post reported that you told your staff that they could have a second chance to revise what they told the Inspector General's Office when the matter of direct or indirect assistance to Contra forces was examined. It was also reported that "you were not satisfied," with some of those statements. As Director of the CIA, would you always offer Agency personnel a chance to revise their original stories? What leads you to believe they should be given a second chance?

Mr. GATES. When I learned about the possibilities that one of our officers in Central America had not followed our policies in terms of contacts with the private benefactors, I instructed that the Inspector General be involved and to investigate that matter. He reported to me in early January, and in my first meeting with the Chairman and Vice Chairman of this committee I indicated that our initial investigation had led to the conclusion that he had violated our policies but not the law and not any of the legislative restrictions on us.

Several days later—the Inspector General came back to me and said that confronted with some documentary evidence, that our officer had changed various aspects of his testimony and that they were going to reinvestigate—that they had to go back and look at

it again. That same day I informed the Chairman and Vice Chairman of the 2 Oversight Committees.

As a result of that and given some of the allegations in the newspapers that others had been involved, and the fact that this one officer had apparently not told us the story straight, I instructed the Inspector General to go back and to reinvestigate the whole matter again. And in that context I told him I wanted to go back and talk—have him talk to everybody that they had talked to before to tell them that we were going to go through this one more time and I wanted them to give us the straight story. That I didn't want them to be concerned about loyalties to their friends or loyalties to anybody else; that we wanted the facts and that we wanted the truth. And it was in that context that——

Senator DECONCINI. What made you think that they hadn't told the truth? Or that they had told the truth?

Mr. GATES. Well I always assume in dealing with our people, as I do with senior government officials, that they're telling the truth. I was considerably disturbed to find out that this one officer apparently had not told the truth. And that's why I went back and wanted to give people—wanted in the investigation to revisit those same people to make clear our view——

Senator DECONCINI. You weren't just going back to that one particular officer, you were——

Mr. GATES. Oh no sir, I wanted——

Senator DECONCINI. You were doing the whole thing over.

Mr. GATES. That's exactly right.

Senator DECONCINI. I think that's a fair observation that when you find something very contradictory or problematic you would go back and address it again. I can't chide you for that.

It was recently written in the New York Times that "short of a war and in addition to diplomacy," the CIA has a vital role to play in pursuing covert operations. Well, the U.S. Congress also has a role to play. As we know, the Boland Amendment was passed by Congress, which prohibited military aid from going to the Contra forces in Nicaragua. And I think that this CIA station chief to whom we were just referring goes by the name of Thomas Castillo, was being recalled to Washington and was reportedly given an early retirement. Was the CIA investigating Mr. Castillo and what has happened with that investigation? Unless it is classified.

Mr. GATES. That officer is being investigated. The officer, when I learned that he had not given the story straight to our Inspector General the first time around, I directed the Deputy Director for Operations to place him on administrative leave until the completion of the investigation, and that is where it stands right now.

Senator DECONCINI. That is under investigation right now?

Mr. GATES. Yes, sir.

Senator DECONCINI. What about the Ambassador, Lewis Tambs, assigned to that post at that time; is that matter under investigation also?

Mr. GATES. I assume that it is. Not by us but by others.

Senator DECONCINI. By others?

Mr. GATES. Yes, sir.

Senator DECONCINI. Other agencies of the United States? You mean the Justice Department or someone?

Mr. GATES. Or the State Department Inspector General, as well as I assume, the various investigative bodies that have been——

Senator DECONCINI. The CIA is not involved in a internal investigation regarding your Agency's working with Ambassador Tambs?

Mr. GATES. Well certainly, the role that our officer played with respect to Ambassador Tambs is a part of our investigation——

Senator DECONCINI. That is a part of your investigation?

Mr. GATES. Yes, sir.

Senator DECONCINI. Have you interviewed Ambassador Tambs?

Mr. GATES. I do not know whether our Inspector General has.

Senator DECONCINI. When Secretary Shultz testified before the House Foreign Affairs Committee that he had learned that John Kelly, U.S. Ambassador to Lebanon, had been involved in perhaps the Administration's secret Iran hostage diplomacy and transfer of funds, the Secretary said that it was against policy for any ambassador to operate independently of the Secretary of State. He promptly recalled him to Washington to explain himself. Do you know what has happened concerning that incident? What was the CIA's involvement with Mr. Kelly to your knowledge?

Mr. GATES. I don't know what's happened. I know that Ambassador Kelly has returned to his post. I don't know that we had any connection with Ambassador Kelly in that—in that particular matter.

Senator DECONCINI. Has the CIA had any connections with Ambassador Kelly to your knowledge?

Mr. GATES. Well we certainly have a close association with him in an operational sense of where he is assigned.

Senator DECONCINI. Did you have any operations with Ambassador Kelly of which the State Department was not aware?

Mr. GATES. Not that I'm aware of.

Senator DECONCINI. And how about Ambassador Tambs? Did the CIA have any operations with Ambassador Tambs that the State Department was not aware of?

Mr. GATES. That is one of the issues that is under investigation at least in terms of our investigation of our officer there.

Senator DECONCINI. I take it the answer would be fair to summarize you don't know.

Mr. GATES. Yes, sir.

Senator DECONCINI. Let me refer you to another area of concern to me. In April 1985, Mr. Gates, National Intelligence Estimates described Israel's interest in the sale of arms to Iran as possibly running counter to those of the United States. In order to assist the National Security Council in its evaluation of the Iran arms sale investigation, did you provide a copy of this Estimate to Admiral Poindexter or anybody in the NSC?

Mr. GATES. Yes, sir, copies of virtually every intelligence estimate go to the National Security Advisor and to members of the National Security Council.

Senator DECONCINI. Were you familiar with this April assessment?

Mr. GATES. Yes sir.

Senator DECONCINI. Do you remember to whom you gave that? Maybe this has been gone over, but I didn't——

Mr. GATES. These estimates, Senator, are hand carried to the principals by one of our officers.

Senator DECONCINI. In this case, April of 1985, who would the principal have been?

Mr. GATES. It would have been to Mr. McFarlane.

Senator DECONCINI. Mr. McFarlane. Thank you.

Mr. GATES. But it is also an estimate that Admiral Poindexter and others would have gotten copies of.

Senator DECONCINI. They would have had copies of it? Can you just quickly—my time is up—can you quickly tell me who would get copies of this at the NSC? Would you distribute more than just to the Director or Mr. McFarlane, or Mr. Poindexter. Or would it go to several staff people?

Mr. GATES. All those associated with Middle Eastern affairs would have gotten copies.

Senator DECONCINI. How many would that have been at that time? Do you have any estimation?

Mr. GATES. Well they are supposed to share copies so I don't know. It would have gone to the three or four people in the Middle East group. It would have gone to those presumably working on the counterterrorist group. I can find that out.

Senator DECONCINI. No that's all right, thank you. Thank you Mr. Gates. Thank you, Mr. Chairman, very much.

Chairman BOREN. Thank you Senator DeConcini. Senator Hecht?

Senator HECHT. Thank you Mr. Chairman. Mr. Gates, as I indicated in my opening remarks, I'm deeply concerned that we should not be led astray about the intentions and capabilities of the Soviet Union, its allies. Despite any soothing words by Mr. Gorbachev, I have yet to see convincing evidence that the Communist leaders in Moscow have changed their ultimate goals and threatening behavior. Since my colleagues are taking care of the Iran/Contra issue, and your views on relationships with the Oversight Committees, I'm going to focus on an intelligence matter of critical future importance to our national security. First, to the extent that you can do so in unclassified terms, please give us your general estimate of what the Russians are doing about the military capabilities, are they still on a buildup, or are they on a plateau, or are they retrenching?

Mr. GATES. Senator, the Soviets are clearly continuing their military build-up. They have programs underway to modernize virtually all of their strategic and conventional military weapons programs. They have research underway on advanced systems, for example in strategic defense. They are producing perhaps in some categories fewer weapons but that is because they are manufacturing more sophisticated weapons that have enhanced capabilities. So I would say that the Soviets are continuing essentially without interruption the kind of expansion of their military capabilities that we've seen over the last several decades.

Senator HECHT. Do you agree with the general view of their continued military build-up described in the unclassified Defense Department publication "Soviet Military Power"?

Mr. GATES. Yes, sir.

Senator HECHT. Second, on arms control, can we really provide adequate intelligence to police any future arms control agreement?

Mr. GATES. Our ability to monitor arms control agreements depends very heavily on the nature of the terms that are negotiated. On the whole, we have a stronger capability to monitor quantitative limitation than we do qualitative limitations. Quantitative meaning the number of deployed missiles, the number of their strategic bombers and that sort of thing. Where we begin to run into trouble on monitoring is in areas such as measuring throw weight, measuring accuracy, and in some cases, even the number of warheads that are deployed on systems. So our ability to monitor really varies and would need to be judged on the basis of the terms that were being negotiated.

Senator HART. Third, in the critical estimates area, what will you do to reinstate the extremely effective Team B competitive analysis procedure? Especially on the Soviet military capability and arms control intelligence topics?

Mr. GATES. We have a number of areas of competitive analysis underway. Both within the community and outside. We have just received a competitive analysis prepared by a contractor on why the Soviets violate arms control. We have competitive analysis under way on specific Soviet weapons systems. On prospects in Afghanistan and several others. So I'm a very strong believer in competitive analysis and I believe that we have a very aggressive program in that area.

Senator HART. Given your experience and background, and your understanding of future issues, o intelligence issues, what kind of a person will you seek as a Deputy?

Mr. GATES. Senator, I am inclined to think that if there is a career CIA officer as the DCI, that we should look outside CIA for a Deputy. Because we do a great deal of our work with the Department of Defense and for the Department of Defense. I confirmed my instinct would be to look to a uniformed officer as my deputy.

Senator HART. You've been criticized as not having covert experience. Would you look to someone who has that type of experience?

Mr. GATES. Not necessarily. I believe that the management of covert activities at the level of DCI becomes a matter of a sense of priorities, a sense of requirements and also a matter of common sense and good judgment. I have a great deal of confidence in the senior managers of our clandestine service. So if a military officer had that capability or had some experience in that that would be welcome, but I wouldn't consider it a prerequisite.

Senator HART. OK, it would be premature to ask you who you might have in mind so I won't do that. Let me quote from your opening statement. We must do something about unauthorized disclosures. We must restore discipline inside the government, especially with respect to intelligence sources, techniques, and assets. This is on page 7. You go on, the cost to our capability from leaks as well as spies has been catastrophic. Am I correct in saying that every member of the CIA is polygraphed?

Mr. GATES. Yes sir.

Senator HART. Including Mr. Casey?

Mr. GATES. Yes, sir.

Senator HART. Also, CIA has what they call compartmentalized intelligence, is that correct?

Mr. Cooper. Yes, Sir.

Senator Hagel. In our Intelligence Committee, our staff meets here have a wide variety of intelligence analysts at their fingertips, perhaps even more so than members of the CIA because everything comes through our Committee. How do you feel about our staff members and being polygraphed?

Mr. Cooper. Senator, I believe that I would be prepared to support more intensive investigations, background investigations and security requirements for those who have access to sensitive compartmented intelligence. Not only in the Executive Branch, but as appropriate and upon term in Congress. I think that if the Congress wishes to take a look at that question, that I think would certainly build confidence within the Intelligence Community itself.

Senator Hagel. To get back to what you said, what's your best, I don't, I don't get that definite comment one way or another.

Mr. Cooper. I think that the Intelligence Community would find polygraphing of staff members who had access to a wide range of sensitive matters to be reassuring.

Senator Hagel. I wholeheartedly agree. And do you think that people would be more open with us in the Intelligence Committee if this is happened?

Mr. Cooper. Well I would like to think that they would be more open with the Committee regardless, but I think it would certainly contribute to that.

Senator Hagel. Thank you very much, and thank you very much Mr. Chairman.

Chairman Bryan. Thank you, Senator Hagel. We'll have another round of questions with Task members of the Committee. I'll begin. Mr. Cooper, in a question that was asked quite a number of, in fact most of the years during the last term, by Senator Nunn, I want to read to you from Title 1 of the National Security Act as amended in 1980, section 501(a). It's just very brief. It says to the congressional, I, it says the Director of Central Intelligence and the heads of all departments, agencies and other elements of the United States involved in intelligence activities shall keep the Select Committee on Intelligence, the Senate and the House informed of their activities.

It is my understanding that Senator Nunn had questioned you about your responsibility of reporting any improper intelligence activities to appropriate authorities, the Intelligence Oversight Board or the Committee or other appropriate authorities. It is my understanding that you gave the indication that if the National Security Council were involved in an inappropriate intelligence activity, you didn't feel an obligation to do so. I wonder that statement giving you a chance to respond as to whether or not that is a correct interpretation of your answer.

Then we've had here debating whether or not the National Security Council should engage in intelligence activities, certainly in the past it has not. It has been principally a coordinating body receiving information, making policy advice to the President, and involved in diplomatic policy or foreign relations policy. But it would appear to the case that the National Security Council was deeply involved in what would normally be intelligence activities, at least in the carrying out of covert operations.

That being the case, setting aside for a moment the question of whether or not the National Security Council should appropriately be involved, if any agency of government, if the Department of Agriculture or the National Security Council were involved in intelligence gathering, or intelligence activities, and these were improper, given the language here in the statutes which I've just cited, let me ask you again just for the point of clarifying your earlier remarks, would you feel an obligation, no matter what agency were involved even if it were the National Security Council, if indeed they did engage in improper intelligence activities, to make such a report to the appropriate authority?

Mr. GATES. Senator, I think earlier I got wrapped around the axle in trying to parse particular responsibilities of agencies and whether or not they were intelligence organizations, and getting that—trying to separate that from the question that you asked in terms of if they were engaged in intelligence activities. I can assure this Committee that if I became aware of any agency involved in an intelligence activity carrying out an improper or illegal act, I would inform this Committee.

Chairman BOREN. Well, would that include the National Security Council?

Mr. GATES. Yes, sir.

Chairman BOREN. Now let me be very specific, had you known, had you received direct evidence, at any point in time—you obviously knew about the Presidential Finding in regard to the arms sale to Iran; obviously you were informed of that and knew it was ongoing although you were not briefed on its operations on a daily basis—had you known at any point in time with certainty that any person or persons at the National Security Council were acting to improperly divert funds from this operation, to provide assistance to the Nicaraguan Resistance, had you known that for a fact, had you had strong enough evidence to merit your conclusion to that effect, would you have at that time felt an obligation to notify the Attorney General or the Intelligence Oversight Board, that in your opinion an illegal activity was occurring?

Mr. GATES. Yes, sir.

Chairman BOREN. Now——

Senator NUNN. Mr. Chairman can I ask——

Chairman BOREN. Let me defer to Senator Nunn here since he asked the original question.

Senator NUNN. Just on that one question because the Chairman phrased that and I think properly so, but it indicates another question of whether you had strong enough evidence to reach a conclusion. My level of evidence for notification would be much less than that. If you think that there is a possible violation of the law or a possible illegal intelligence activity, I think that triggers an obligation. Maybe you don't interpret the law that way. The word possible is not in the law, but I think that's the intent. So I ask you as a follow-up to the Chairman's question, how do you interpret it, and what level of proof? I mean we're not talking about you being a jury here.

Mr. GATES. I would be prepared to act at a threshold less than conclusive evidence. I would, if I became convinced that there was enough information there that there was a strong indication or

good evidence that there had been some sort of possible violation of law, then I would so notify.

Chairman BOREN. Again, Senator Nunn, are there any other questions on that specific point that you would like to pursue, I'd prefer to defer to you now, then I'll come back to my original question.

Senator NUNN. Well, that gets back to the original point. I cited about 7 different things that happened that indicated to me that there was serious concern by you and the Director, including, your suggestion of review by CIA counsel, your suggestion of review by White House counsel, the Director's suggestion that Colonel North get an attorney or get counsel, the 2 or 3 occasions you said we have to go public with this, the recitation that the program was out of control. All of those things happened. And yet your testimony was a few minutes ago that none of those—and, as I understand your testimony, even to today, what you know, none of those would have triggered your sense of obligation for notification to either Congress or the President's Intelligence Board. That's my understanding of what your testimony was.

Mr. GATES. Well, as I say, most of those had to do with the question of operational security. The business about going public, the reference to the project being out of control were in the context that all these investors knew about it, it was clear that a number of foreigners knew about it and the whole thing was just waiting to explode in the public and they ought to, ought to get it out. It was not in the context of concern about wrongdoing.

Senator NUNN. You still, looking back on it, don't believe you had a notification obligation even knowing all you do now?

Mr. GATES. Well if I knew then what I know now, yes sir, I do.

Senator NUNN. The Attorney General of the United States, Mr. Gates, started an investigation and it became a criminal investigation with a lot less evidence than you knew at the time. He did it but you didn't report to the Congress, or to the President's Intelligence Advisory Board. I emphasize that latter because that seems to me to be a broader mandate for reporting than even to the Congress.

Mr. GATES. Senator, at the end of December, having looked through all of the files, having had the interviews with Col. North and everything else, the Attorney General and the Deputy Attorney General both said words to the effect, nothing on its face suggested criminality, and the Assistant Attorney General said there was no obvious indication a crime was committed. Now that was at the end of December after they had looked through all the files initially. Now if after looking through all that——

Senator NUNN. Something triggered the Attorney General's interest so that he took a weekend and did a crash investigation in the White House at a time when you had not decided it warranted even a notification to the President's Intelligence Oversight Board, and I emphasize that mandate under the Executive Order that says you shall notify them not just when there's an illegal intelligence activity, but also if the President's own policies are not being carried out. And when you heard that business about diversion to the Contras, and you heard it 2 or 3 times, it seems to me you had an obligation, not to the Congress of the United States directly in first

instance, but to the President of the United States to let either the President know, or to let the Intelligence Oversight Board know because that activity certainly, I would assume, based on your knowledge would have contravened the President's policy. You didn't have any indication that the President wanted money diverted to the Contras from the Iranian arms sales did you?

Mr. GATES. No, sir.

Senator NUNN. Wouldn't that contravened his policy?

Mr. GATES. Yes, sir.

Senator NUNN. Well, why didn't you let him know?

Mr. GATES. I, only——

Senator NUNN. I mean we've got a President that's been severely weakened here.

Mr. GATES. I only heard it once Senator, and that was on the 1st of October, and furthermore, the Attorney General said—at least was quoted in the newspapers as saying in late December, when he was asked why he had done some things that he had done over that weekend, was that there was no indication of a criminal activity. He was looking into it because of a—a piece of paper of something——

Senator NUNN. But the Attorney General, Mr. Gates, went to the President of the United States and said, Mr. President we may have a problem and we are going to investigate and the President said go right ahead. You had known for several weeks before that the same thing the Attorney General knew then and you never let the President know? As far as I know you never let the—the Oversight Board know, you never let the Congress know. It seems to me you've got a very high obligation in your position and I include the Director in this, to let the President of the United States know when someone is suspected of violating his own policies and directive.

Mr. GATES. Well Senator, I——

Senator NUNN. Unless you thought that's what the President wanted done, did you?

Mr. GATES. No sir. I don't know what Mr. Casey did with respect to the President but I do know that we raised this with the National Security Advisor to the President to tell him that we thought he ought to look into it. These involved matters about which we didn't know very much. We were largely in the dark on these funding matters and the use of these private investigators and so forth. These were not matters that we were in a position to make any evaluation about at that point.

Senator NUNN. What do you think your obligation is to the President's Oversight Board when you believe the President's policy has been contravened? Do you take that obligation seriously, is that taken seriously in the Executive Branch or is it just a commission that doesn't mean anything?

Mr. GATES. The Intelligence Oversight Board?

Senator NUNN. Yes.

Mr. GATES. It is taken seriously.

Senator NUNN. What's your obligation, because you had heard on two or three occasions from various places that money was being diverted to the Contras from the Iranian arms sale and you never let them know?

Mr. GATES. Senator, again I only heard one time and that was on the 1st of October and the analyst admitted that he didn't have very much to go on at all.

Senator NUNN. Well, your answer to Senator Boren does at least ease my mind to some extent. What you're saying now is that if you found out there was a covert activity going on, an intelligence activity going on in the Agriculture Department, you would feel that was covered?

Mr. GATES. I would feel an obligation to report on that.

Senator NUNN. How about the Education Department?

Mr. GATES. Yes, sir.

Senator NUNN. The Health and Human Resources? [Laughter.]

Mr. GATES. Any agency of the government, Senator.

Senator NUNN. Any agency of the government, including the National Security Council.

Mr. GATES. Yes, sir.

Senator NUNN. Thank you, Mr. Chairman.

Chairman BOREN. Senator Cohen, do you have any other questions.

Senator COHEN. Well I have a few more, just to perhaps to go over a couple of other areas. In dealing with a timely notice this morning, you indicated that there may be circumstances that the President would not want to give prior notification to the Members of Congress. I believe Senator Roth was trying to indicate that it could be a couple of months, several months, in the judgment of lawyers as to what is timely. And really it's not going to be very helpful to any of us to engage in that kind of analysis. I think most of us feel that it's unwise to try and write specific time limitations for notification. Legislatively it would not be a wise policy to pursue being too rigid. I think what you were saying, it's unwise—unwise Executive policy to extend that lack of notification beyond several days. Is that a fair characterization?

Mr. GATES. Yes, sir.

Senator COHEN. There has to be some——

Mr. GATES. That would be my recommendation.

Senator COHEN [continuing]. Mutual understanding that he needs flexibility but flexibility should not be construed as license to continue for several months and indeed in this case nearly 10 months.

Mr. GATES. Yes, sir.

Senator COHEN. Another question that comes to my mind in terms of—who is going to watch the custodians? How do we know how many findings still reside in the bowels of Ollie North's safe? How do we know—how do we know what's still there? We have a question I believe, one columnist wanted to set up some kind of a board just to deal with Findings, Finding the Findings. How do we know how many Findings are out there? That we're not aware of?

Mr. GATES. Well all I can say is that there are no Findings out there that we know about that you don't know about.

Senator COHEN. But the Agency didn't even know about a lot of Findings. We found McMahon for example, the Deputy Director back in December was told by Admiral Poindexter that there was a Finding or told that a Finding was in Admiral Poindexter's safe. And apparently no one has seen that Finding.

Mr. GATES. Our impression is that during December there was no signed Finding.

Senator COHEN. So that was a lie basically that McMahon was told?

Mr. GATES. Sounds like it, yes, sir.

Senator COHEN. Let me read from something from Thomas Powers book called "The Man Who Kept the Secrets". He is writing about a former DCI, Richard Helms, I would like to get your reaction to it. Powers wrote and said that in Helms' view the CIA's role in such covert operations tends to leak out and the larger the operation the quicker it leaks, endangering not only the security of CIA operational assets, funding arrangements, the location of safe houses, proprietary companies, techniques of cover and so on, but something much more important; that public invisibility without which an intelligence agency cannot inspire confidence in those who trust it with their lives, their fortunes, and their sacred honor, and without which it cannot conduct the sort of operations no nation can undertake openly. Richard Helms seems to have understood this process of exposure better than many other high CIA officials. He disliked big paramilitary operations like the Bay of Pigs because they were hard to keep secret, because their exposure tended to dump in the agency's lap the American public's instinctive dislike of the anarchic reality of international relations in which power is often rawly exercised. If American policy makers thought Castro was a sufficient threat to justify invasion, fine, let the military do it. But don't risk the Agency's ability to collect intelligence and conduct the quieter forms of coercion appropriate to an intelligence service by asking you to do an army's job. That only forces it upon the public's eye, inviting scrutiny which is the one thing intelligence services cannot survive. By assigning the CIA huge projects which Americans dare not undertake openly, the President and the Agency officials who try to deliver what he asks threaten the CIA's ability to do anything at all.

No. 1, do you agree with Helms' view on those kinds of covert paramilitary operations?

Mr. GATES. I think that it is a fair judgment that it has historically been difficult for the United States to keep completely secret large-scale covert paramilitary activities.

Senator COHEN. What's your recommendation? Someone asked you today, I think Senator Bentsen said what's your position on covert action? I think you indicated you would offer it as an option to the President and if he wants it, it's his to take. In other words, you would not take any advocacy position with respect to covert operations?

Mr. GATES. I think that as an individual and as an intelligence advisor to the President, I would make recommendations to him when I thought a covert action was advisable or inadvisable.

My view on these large scale paramilitary activities is perhaps less restrictive than Director Helms expressed it in your quotation. It's not ideal and if the United States could carry out these activities completely privately that obviously would be far preferable than operating in some sort of grey area. And it is true I think that these kinds of activities occasionally bring controversy to the agency. But my view is that if there are covert—that if the policy

makers judge or in my judgment, I conclude, and would recommend to the President that the use of covert action is the only available means by which the United States could affect a situation that bears on its national security, even if there are risks, even if there are controversies, then that is probably a risk or a price we should pay. And I think that as long as official acknowledgement is not made, as long as we are able to keep the modalities of the help private, or secret, as long as we can conduct the operation in such a way that third parties are still willing to help us because of the lack of an official acknowledgement, then I think that those activities can be undertaken.

It seems to me that the key test is really one of the degree to which there is agreement here in the Congress on the activity. I think that the contrast between Central America as an example and some of the other activities in which we are engaged in terms of both the publicity and the amount of leaks and the controversy is notable. It seems to me that when covert actions become a serious problem is less because there are leaks about them than because there is controversy here at home over whether that's the appropriate mechanism for the United States to exercise its influence. So I would be, I would be more inclined to use as a rule of thumb, is this a covert activity that you can—you will brief to the Congress, and you can be fairly assured that you will get bipartisan support over a period of time. It seems to me that one of the problems that we have in our foreign policy is our inability to sustain activities over a prolonged period. And I think that, and as I said in a speech, I think that the only way that you can have a policy that can be sustained through more than one presidential administration is to have a policy that has bipartisan support here on the Hill. And so I would draw that distinction rather than Mr. Helms' distinction in terms of of whether it can be kept totally secret or not, my rule of thumb would be, is this something which is likely to be able, before getting involved in a large scale paramilitary is this the kind of thing that can be sustained in the Congress.

Senator COHEN. Well, sometimes you find, I don't disagree with what you're saying, but you sometimes find an interesting paradox whereby we are providing covert assistance to a country; the recipients of the country know that we are providing it; they would like their enemies to know that we are providing it; they would like their enemies' supporters to, be it the Soviet Union or the Cubans or some other country to know that we are in fact supporting them; and we end up denying only to the American people. And it becomes very difficult when you're trying to do that by working it through the Intelligence Committee which does not conduct its meetings in public obviously, which has to try and maintain some sort of support on the floor, you're having a major program undertaken with very little debate, open debate, and yet everybody but either Congress or the American people know. We have the interesting situation where an African leader might be invited to the White House and a President or Vice President openly declare our support for that particular country and yet it's supposed to be a covert program. It becomes very difficult to draw those kinds of lines whereby you're not going through the normal institutional process, not going to the Foreign Relations Committee, but you're

going behind closed doors to a small group of people saying we have a covert action program which is on the front pages of the Washington Post or New York Times—I don't want to discriminate here—and an open display about our support for that country. So I think that we've got to start drawing some lines between these overt-covert types of operations if you're going to hope to have the kind of bipartisan support we're talking about.

Let me just go on to another issue about politicizing analysis. I think you indicated earlier this morning and the record certainly shows this, that you objected to release of some of the specific intelligence pertaining to Iraq, but that you were overruled by the NSC and CIA was directed to prepare that intelligence material. And I think that this incident at least raises the issue of whether or not analysis is being used to serve political ends. There is another type of politicization that has taken place. Frank McNeil recently—he's one of the State Department's more respected Latin American experts because of his concern over a different sort of politicizing. McNeil said he was subject to an exercise in McCarthyism because he had a somewhat different view about the validity of our program in Central America. I was just wondering whether you as Deputy Director ever detected efforts to skew analysis or were told that our analysis conclusions were not correct or helpful to a particular program. Has that ever occurred in your experience?

Mr. GATES. I've been told that they weren't correct or helpful on a number of occasions. I on the other hand have not had in the 4½ years that I was Deputy Director for Intelligence, I never had someone come to me and say this—you've got to make it come out this way to support policy.

What I find is usually the case when people are trying to influence the analysis—and, let's be honest, policy makers want intelligence that supports what they want to do. But it usually takes the form of have you considered these additional questions, have you considered all of this evidence and so on. They usually are not so blatant as to come out and just suggest that you stack evidence or that you skew the analysis.

And frankly, I think that partly because of the community's reputation, the CIA's reputation for objectivity and its jealousy of that fact, zealousness to protect that, people from the Deputy Director for Intelligence and Chairman of the National Intelligence Council on down are very protective of that independence and the integrity of that product. The integrity of that product is what our business is all about. We're just out of it if people—I mean we can be wrong, and that's a lot less worse than people believing that we just are arguing a particular line for political reasons. So we put a lot of emphasis on the independence of analytical process.

I would say that for example in Central America there was a good—I mean in Latin America, there was a good deal of controversy two or three years ago over an estimate that we did on Mexico. I think that it's worth pointing out that the very first page of that estimate reflected the deep divisions within the community over that issue. And I think that one of the things that we have done in the last several years is make it more respectable and in fact welcome the presentation of these alternative views within the estimates to make sure that there is an honest presentation.

Senator COHEN. I hope you appreciate I guess the intensity of the line of questioning you have been subjected to today dealing with the notification. I don't know that you were entirely familiar with the background behind the committee's sense of frustration going back to what Senator Moynihan was talking about this morning, dealing with the mining of the harbors in Nicaragua in terms of how that was handled and its presentation to the committee. That in my judgment is why there is such sensitivity on the part of the membership about reasons why they should be notified. And I gather from the comments of a number of colleagues they were quite prepared or eager for you to sacrifice your career on the basis of a program that you didn't either authorize, initiate or recommend or have much information about.

I indicated to you before that I am not prepared to adopt that particular posture, but it does reflect at least concern on the part of members that we don't want to find ourselves in the same position again with you as we have in the past. Namely, you don't ask the right question, you don't get the right answer. We've had it happen with State Department officials coming before the Committee, saying, gee, I didn't think you asked me that question directly, I thought I circumvented that and gave you a different answer. That's an attitude which has been too prevalent in recent years. And it's undermining the relationship that we have in congressional oversight, which I think that you recognize as being very beneficial to the community's interest.

Right now, because there is such, I guess, distrust, that has been sown, we have a number of committees, not just this Committee, or the House Committee, that has oversight, we now have hearings scheduled for the Foreign Relations Committee, and the Governmental Affairs Committee now wants to excercise some oversight jurisdiction in terms of how NSC and CIA are operating. So when the relationship between the Oversight Committee breaks down by virtue of non-notification such as it did here, then it breaks the credibility of this Committee. And when that happens, the normal force of events leads us to the conclusion that every other Committee now wants to investigate the Central Intelligence Agency and related activities.

So it's very important, and that's the reason for this kind of criticism or crossfire you've found yourself caught in this afternoon. But I hope you will think about what I had to say, and what other Members have to say during the course of the next few days. I think I understand the position you've found yourself in. And I might hold you to a different standard had you been the Director, had you been in on the ground floor so to speak, in the take off, in this particular program. Had you not asked the the questions that should have been asked, I think it would throw your candidacy or nomination in a much different light as far as I'm concerned.

Mr. GATES. Senator, I might just respond. Senator Warner mentioned in his comments this morning that one might be expected to grow under these circumstances. I certainly have thought a great deal about what transpired in October and November. And frankly under those circumstances, I think were I to confront similar circumstances, I would be more aggressive in pursuing the issues.

But I think that events that transpired within a matter of days or weeks of those that we're describing suggest my attitude toward the very issues that you're raising. When we launched our Inspector General Fact Finding Report on November 26, I committed to these two oversight Committees without having any idea what would be turned up by the Inspector General that the full text of that Inspector General Report would be made available to both of the Committees. I did that at the outset. When this problem with respect to Central America and the behavior of one of our officers came up, I reported that immediately to the Chairman and Vice Chairman of both of these Committees, had our Inspector General report it to the Intelligence Oversight Board, had the General Counsel report it to both the Tower Commission and the Special Counsel. So I am hoping that, or I would hope that the Committee would recognize that in those activities I acted very promptly to ensure that the Committees were well informed and I think that's indicative of the kind of approach that I intend to have with these Committees.

Senator COHEN. Well I'll just conclude with this Mr. Chairman. The reason I suggested that some of the rationales were not holding up is because so much confusion has been generated by what the purpose of the program was initially. I am satisfied, having looked at most of the documentation, that what started out as a conceptually sound idea, namely to establish a better relationship with whatever factions might exist in Iran, was a legitimate one. Getting the hostages back was legitimate. But at the operational level it evolved immediately into a preoccupation, to say the least, with the return of the hostages.

And to the extent that the President is correct that this really was a strategic dialogue, that was the critical factor in his policy, then in my judgment if that's the case, there is no justification for delaying notification for ten months. That is a long-term project that would not under any circumstances warrant delaying notification under any interpretation of timely notice. If however, it was getting the hostages back you could make a better case for getting the hostages out saying I'm going to withhold notice until they're all out. That of course would contradict what the official statement is as far as the rationale for the program. So it's those kinds of inconsistencies that have led to the confusion and the reason why some of the rationales offered don't withstand scrutiny.

Chairman BOREN. Thank you, Senator Cohen. I mentioned earlier this morning at the outset of the hearing that the Committee, in an effort to be as open as possible and as accountable as possible to the public, would authorize the release of an unclassified transcript of the testimony of Mr. Gates for the committee on Thursday, December 4. I now offer that unclassified transcript of the testimony into the record at this point.

[The documents referred to follows:]

TESTIMONY OF ROBERT GATES

THURSDAY, DECEMBER 4, 1986

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to notice, at 1:16 p.m., in room SH-219, Hart Senate Office Building, Hon. Dave Durenberger, Chairman of the Committee, presiding.

Present: Senators Durenberger, Roth, Cohen, Specter McConnell, Bentsen, Nunn, Eagleton Warner and Byrd.

Staff Present: Bernard McMahon, staff director; Daniel Finn, chief counsel; and John Elliff, Fred Ward, and Kathleen McGhee, staff members.

The CHAIRMAN. Bob, will you stand and let me administer the oath?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GATES. I do.

The CHAIRMAN. Are you Robert Gates?

Mr. GATES. Yes, sir.

The CHAIRMAN. What is your position at the Central Intelligence Agency?

Mr. GATES. I am Deputy Director of Central Intelligence.

The CHAIRMAN. It is the Committee's understanding that you have decided not to be accompanied by counsel in view of the Committee's decision not to permit Central Intelligence Agency attorneys to represent CIA witnesses. Is that correct?

Mr. GATES. Yes, sir.

The CHAIRMAN. Mr. Gates, you have been invited to provide testimony to this committee, under oath, concerning the extent of and authorization for U.S. intelligence activities in connection with the sale of arms to Iran and the use of the proceeds to support anti-Sandinista forces in Central America.

Have you received a copy of the Committee's Rules of Procedure?

Mr. GATES. Yes, sir.

The CHAIRMAN. Have you received a copy of the letter to the President, sent by the Chairman and Vice Chairman of this Committee on November 28th, which describes the focus and the objectives of the Committee's investigation?

Mr. GATES. I think so; yes, sir. I have seen so many pieces of correspondence in the last couple of weeks.

The CHAIRMAN. Well, would somebody provide him with a copy?

You are being provided a copy of the Chairman and Vice Chairman's letter to the President of November 28th. And I will just ask if you have had a chance to review it as to the focus and the objectives of the Committee's investigation.

Mr. GATES. Yes, sir.

The CHAIRMAN. At this point, then, we will proceed to question the witness concerning his knowledge of events relevant to the investigation.

I understand that you have some information you would like to get on the record relative to the Agency's compliance with a subpoena of records from the Agency.

Mr. GATES. Yes, sir. Mr. Chairman, we received the subpoena late yesterday afternoon. The scope of some of the request was much broader than the data that we had been collecting up this point.

We will comply with the subpoena. A large amount of information will be delivered to the Committee this afternoon by the deadline specified, and the remaining materials [deleted] or as agreed between us and the Committee staff, will be delivered as quickly as possible.

The CHAIRMAN. Thank you.

Proceed with the questions then.

Mr. MCMAHON. Mr. Gates, the aim of the initial hearings is to develop a detailed chronology of the events of which each witness has personal knowledge in connection with either the provision of arms to Iran or the provision of support to the contras after congressional termination of the funding in October of 1984.

For each event, as you establish this chronology, we would ask you to cover all of the following points: who was involved, what was said or done, why did it happen, who authorized or approved it, and what documentation may exist.

And if we could begin with that chronology, going back as far as you can, and I would like, if we could, to cover the sales to Iran and activity related thereto, and then separate that, if possible, from the Contra diversion issue.

Mr. GATES. All right. The separation is an easy one until the 1st of October, 1986.

The first I recall catching some glimpse of the program for dealing with Iran by the NSC was on December 5th when John McMahon, I presume in anticipation and preparation for his meeting with the President and other Cabinet members on the 7th, convened a meeting to ask a number of questions.

The others presented at the meeting, as we have been able to reconstruct it, included the Associate Deputy Director for Operations, Ed Juchniewicz; the Chief or the Director of the Office of Near East and South Asian Analysis, the Deputy Chief of the European Division, and myself and John McMahon.

As reconstructed from cryptic notes prepared by McMahon's special assistant, the meeting began with Mr. McMahon asking a long series of substantive questions about Iran: the nature of the factional struggle, the military balance between Iran and Iraq, I think he asked for a biography of [deleted] and several other substantive questions.

He also asked whether the Iranians, according to these notes, [Deleted.] Were seeking spare parts so they could deal with Soviet Bear aircraft purportedly flying along the Iran-Iraq border or along the Soviet-Iranian border.

In any event, he asked those substantive questions. Some were answered at the time by [deleted]. Let me go back. I think also the Chief of the Near East Division, [deleted] was also present at the meeting.

There was then a discussion with the Directorate of Operations people, and I should point out that at that time I was still Deputy Director for Intelligence, and so my primary focus was on these substantive questions that were asked. He turned to the DO people and there was some reference to a flight that had taken place a few days earlier, the fact that there were to be other flights, and some operational discussions pertaining to the flights of the airplanes.

I was pretty much unaware of the context of that, but that was the first indication that I had had that the U.S. was involved in some way in these arrangements with Iran.

The next involvement that recall occurred toward the end of January when, on the 25th of January, I believe, Mr. McMahon convened a meeting which I attended. And as best I can reconstruct, the purpose of my being at the meeting was that the NSC had requested, in the context of its dealings with the Iranians, [deleted] as part of the—presumably, as part of the assurances of good faith by the United States.

Well, I must say that I agreed in principle with the notion of an overture to the Iranians and trying to establish some channel of communication with the Iranians.

[Deleted.] At about that time, and I don't recall the exact dates, I learned of the full, at least I have my earliest memory of the full range or scope of the activity that the NSC had in mind when they prepared a scenario paper that we were given a copy of that detailed the various stages of the arrangements that were being worked out with the Iranians. And it said that in effect, on such and such a date the Iranians would do this and the U.S. would do a certain thing in response, and then a whole chain of events.

The first one had specific dates in it. And one that I remember that caused us considerable chuckles at the time was the fact that one of the entries was that on the 11th of February the Ayatollah would step down from power. While it looks naive in retrospect and was silly at the time, the only thing I will say is that I believed that that part of the scenario was laid out by the Iranian interlocutors; that that was not something that the NSC thought they had arranged. Let me say that that is an assumption on my part.

In any event, this laid out the full scope that there would be arms transfers and that hostages would be released there would be a meeting in Tehran at a senior level, and there would be a discussion of strategic issues and information discussed pertaining to the Soviet threat to Iran.

I do not recall that that document listed the precise numbers of weapons to be provided. The only thing that I can say there is that I was, when I eventually learned later this fall of the exact numbers of TOWs, I was surprised by the size, by the number, although I knew that TOWs were part of the package.

[Deleted.] or a CIA account through which the money was being paid. I didn't know the operational details in terms of the involvement of our proprietary. But I knew a fair amount about the project itself.

The next time I was directly involved in anything was the 1st of October, and on that date Charlie Allen, the National Intelligence Officer for Counter-Terrorism—

Mr. MCMAHON. Excuse me, Mr. Gates. When did you become the Deputy?

Mr. GATES. I think I was sworn the 18th of April.

And I think there, the reason that I was not more directly involved was that the enterprise was already well underway and because I had known the broad param-

eters. No one bothered to come up and give me a briefing of the proprietary role and the bank account and that sort of thing; and, frankly, I didn't ask.

Mr. ELLIFF. In your role as DDI until April, do you recall any intelligence going to the NSC with respect to this from the DDI?

Mr. GATES. There were two categories of intelligence that were being provided on a continuing basis. The first was the finished intelligence prepared in the normal course of events, and there is a good deal of intelligence on the Iranian economy, on factional—on political struggles inside Iran, on Iranian attempts to acquire arms overseas. There were a number of papers prepared on Israeli arms to Iran, typescript memoranda on the Iranian efforts and what we thought the Israelis might be doing.

I would say, in retrospect, that there were two documents in the spring of 1985, just continuing on with this question, that may have had some influence on the decision of the President and his advisers at the NSC to undertake this effort with Iran, although I certainly don't believe they were the sole cause.

The first was a typescript memorandum prepared by the then Vice Chairman of the National Intelligence Council and, simultaneously, National Intelligence Officer for the Middle East, Graham Fuller, on the dangers involved in a frozen U.S. posture toward Iran and the dangers of the Soviets being able to exploit differences with Iran to their advantage and at a point when we were not doing anything.

There were several suggestions made at the end of this memorandum about what the United States might do, and they included such things as ignoring Iran but strengthening Pakistan and Turkey in new and more dramatic ways in the event the Soviets did acquire a role in Iran; another one was a more decisive tilt toward Iraq; another one was—I don't remember all six of them. But the only one of those recommendations that concerned military affairs in any way was a recommendation that perhaps, if we wanted to send a signal to Tehran of a willingness to be more accommodating, that we might withdraw U.S. naval units in the Persian Gulf. There was no mention in that memorandum whatsoever of any kind of an arms deal with Iran.

The recommendation, of all of his choices, of all of his recommendations or all of the suggestions that Mr. Fuller made, the one that he actually came down on and suggested offered the most promise was trying to build influence in Iran through third parties in the West; primarily, the Europeans—the French and the Italians and others. That this was the route the United States ought to take to avoid the West being frozen out in Iran.

The other document that may have played some role was a National Intelligence Estimate, a special National Intelligence Estimate done, I think, just two weeks later. It is dated May 30th, if I am not mistaken.

Senator COHEN. 1985?

Mr. GATES. 1985. And that document basically presented a very pessimistic view of what was going on in Iran. It highlighted a number of pieces of evidence of instability and the dangers, the very real possibility that there would be significant instability before Khomeini died and during 1985, and it also cited number of instances, a number of pieces of evidence or events that suggested the Soviets were making some significant inroads in Iran at that point. So it was a fairly worrisome picture that the Estimate presented.

There was another Estimate in February of 1985 that, in fact, was much more sanguine. That the worries that we had had about instability and about the Soviets had not panned out to the extent that we had forecast in the earlier Estimate. That, in fact, the problems between the Soviets and Iran had proved to be more difficult and that the Soviets had not made as much progress, and that, in fact, there had not been as much—that the Khomeini regime has been able to stay on top of its problems better than had been forecast roughly 10 months before.

So those are three major examples of intelligence from the analytical side that went to the White House, but there were a number of other items in the President's daily brief and the National Intelligence Daily, finished research papers by the Directorate of Intelligence, and typescripts on the subjects that I have described.

The other source of intelligence that was sent to the NSC, in effect, was more related I think to the project and was channeled through Charlie Allen. Charlie made a number of requests for specific information, particularly to the unit in the Directorate of Intelligence that deals with international arms trafficking. And he had asked them for a series of analyses on Israeli arms shipments to Iran, Iranian efforts to acquire arms elsewhere, and these were spread out pretty much through the period, over a year or more.

So there was the one area where there was relatively little intelligence passed, except insofar as Allen perhaps had conversations with analysts, which are not—which I don't know anything about. Relatively little on the political situation direct-

ly focused on the project. In other words, you had a good deal of analysis being done independent of the project on the political events in Iran, but very little that was tasked directly in connection with the project. Okay?

Mr. ELLIFF. Another question on Mr. Allen's intelligence. You referred to the intelligence that was tasked in the Directorate of Intelligence in CIA. At that time what was Mr. Allen's position?

Mr. GATES. He was at that time also the—still the NIO for Counterterrorism.

Mr. ELLIFF. And in that capacity was he subordinate to you as head of the DDI?

Mr. GATES. He was subordinate to me in my capacity as Chairman of the National Intelligence Council.

Mr. ELLIFF. In your capa ity as Chairman of the National Intelligence Council, were you aware of his task ng any other agencies than the CIA's Directorate of Intelligence for intelligence to support the project?

Mr. GATES. I know that he was in contact with NSA in terms of levying specific requirements in connection with the project.

Mr. ELLIFF. Do you know anything more about it, or just that there was this contact?

Mr. GATES. That is right.

And, I know now, in retrospect, you know, looking at chronologies and so forth, specific kinds of things that he tasked of NSA, but I didn't know those details at the time.

Resuming, the final period in which I had direct contact with this project began on October 1st when Mr. Allen came to my office, again, in my capacity as DDCI, and briefed me on a series of problems related to the project that involved—in his view, involved a serious risk to the operational security of the project. It mostly had to do with the fact that the NSC had decided to abandon one channel of dealing with the Iranian representatives, and pick up on another, with the first channel not being satisified that its financial arrangements had been taken care of, some evidence that people involved in the project felt like they had been cheated, that there were overcharges and that they had been cheated, on the Iranian side, and that creditors or people who had been involved in the financing were not being paid back and were threatening to go public, and that all of this posed an operational security risk to the project.

He then added that he had come to the analytical judgment that he thought some of the money was being diverted to other U.S. projects, U.S.-sponsored projects, including the Contras.

Senator BENTSEN. What was the date of that?

Mr. GATES. October the 1st.

I was startled by what he told me. And frankly, consonant with the way we had responded to such stories in the past, my first reaction was to tell Mr. Allen that I didn't want to hear any more about it. That I didn't want to hear anything about funding for the Contras. But then I realized that in contrast with some of the rumors that we had heard in the past that what we had here was an analytical judgment based on a close reading of material and other knowledge of what was going on, and I told Mr. Allen that I thought we had better get that information to the Director.

We made an appointment. There was an intervening weekend. That was on a Wednesday or a Thursday, October 1st. We finally got in to see the Director. We arranged to see him, and saw him on the 7th of October. And the Director was as startled as I was, and directed Mr. Allen to put down all of these views in writing, and Mr. Allen agreed to do that.

At about the same time, and this is something in which I was not directly involved, but it is germane to the story at about the same time, Mr. Casey received a call from a friend of his, a Mr. Furmark, who was a lawyer for Khashoggi; and Furmark was, in effect, telling the Director the same thing that Charlie told him: That the people involved in the financing were feeling cheated and that they were about to go public.

I think this was another thing that heightened the DCI's concern about the situation.

On the 9th of October, Oliver North came out to the building to debrief the Director on the talks in Europe. They had lunch, and I joined that lunch. And there were several things that happened at that lunch.

The first was that Mr. North did, in fact, brief on the discussions in Europe. Second, he talked—and I think that the Director may have raised this subject. I don't remember who initiated it precisely, however, But there was a discussion of Ghorbanifar's financial disarray and the problems that he was having. North than made a very cryptic reference to a Swiss account and money for the contras. Casey and I did not pursue that, but I took the occasion to ask North directly whether

they were any CIA people, assets, proprietaries, or involvement in any way, direct or indirect, in any of his efforts having to do with, or any of the efforts going on, regarding private funding efforts, for the contras. And he gave me a very unequivocal answer that CIA was completely clean. That he had worked very hard to keep those separate.

I recorded that because of what were hearing from Mr. Allen and what the Director had heard from Mr. Furmark and knowing that Mr. Allen was prepareing this memorandum. That was the first point in this whole business that I actually made a memorandum for the record and recorded that uncategorical assurance from North that the Agency was not involved in any way. Including proprietaries or assets.

The only other aspect of that meeting was that up until that time the Agency still did not have a copy of the finding of January 17th. And I told the Director, in front of North, that maybe I had been reading too many novels, but the fact that there was only one piece of paper and it sat in John Poindexter's safe made me very nervous. That if that piece of paper was to disappar a lot of people could be in a lot of trouble. And so I insisted that the Director insist to Poindexter that Casey be given a copy of the finding, and North said that he would undertake to facilitate that, and we got the finding a few days later. That was on the 9th of October.

Allen finished his memorandum on the 14th and gave me that memorandum on the 14th. I took it in to Casey immediately and told him that I thought we ought to get it to Poindexter right away. He called for an appointment with Poindexter and the earliest we could get in——

Mr. MCMAHON. Can you describe what was in the memorandum?

Mr. GATES. The memorandum basically reflected the description, basically reflected the financial problem, the political problems involved in shifting from one channel to the Iranian government to another, or from one faction to another, if you will, and the financial problems of Ghorbanifar and the various other players.

And in fact, in the memorandum of 6 or 7 or 8 pages—I don't recall how long it is—single spaced, there is only one sentence that refers to the possible diversion of funds. It is primarily a memorandum about the problems involved in this program and the risks to operational security.

There is no mention in the memorandum specifically of a diversion to the contras. That reference to me was oral on the 1st, and repeated again to the Director on the 7th.

Senator BENTSEN. One line was what, did you say?

Mr. GATES. Referred to the diversion, the possibility of the diversion of funds from these accounts, or from these sales to the Contras.

We saw Poindexter on the afternoon of the 15th of October and handed him the memorandum. He thanked us, and that was pretty much it.

At that point we also told Poindexter that he ought to think seriously, in view of all of these people that knew about this, that they ought to think very seriously about preparing a complete statement of the entire Iranian project and having the President make it public either through a speech or something else, but to lay before the American people what the entire enterprise had been about.

And I recall one or the other of us saying that the worst of all possible worlds would be for it to leak out in dribs and drabs.

The CHAIRMAN. What was the date of this meeting?

Mr. GATES. This was the 15th of October.

Senator BENTSEN. And that was you and Poindexter?

Mr. GATES. And Casey.

Senator BENTSEN. And Casey.

Mr. GATES. I then went overseas for 2 weeks—decided to seek a safety clime. It is my impression that during the time I was gone, if not before, the Director told Poindexter that he ought to have the White House Counsel review the entire undertaking to make sure that everything they had been doing down there was legal. And I think he may have even told Poindexter that Mr. North, perhaps, ought to get himself a lawyer.

Senator COHEN. Who told North?

Mr. GATES. Casey told Poindexter that. That is my understanding; I was not there.

Mr. ELLIFF. What is the basis of your understanding?

Mr. GATES. Let me go on to the next thing and then come back to that.

At the next, at the first meeting with Poindexter after I returned from overseas the 6th of November, the Director raised this business of taking the whole thing to the White House Counsel again, with Poindexter, this time in my presence. And Poindexter's response was that he didn't trust Walliston to keep his mouth shut about the whole thing and that he would look to Paul Thompson, who I think, he

said was a lawyer. And Thompson, I think, is military assistant to Poindexter, or executive assistant.

And it was in reference to that and in discussing that with the Director in the last couple of weeks that he recalls that that was not the first time he had recommended that to Poindexter. That he had told him earlier that he ought to have the White House Counsel look over the legality of the White House's role in the whole thing, and what they had been involved in.

The meeting on the 6th basically was the last one in which I recall any discussion of these things before the entire matter became public, first through the Iranians and then here in Washington. There were at least two meetings between the Director and I and Poindexter, and I think Poindexter alone, during our weekly, our regular weekly meetings in which the subject of the special Iran project came up. The memorandum for the record that I made of those meetings simply contains the notation that the subject was discussed and no further information; and, franky, I can't remember specifically what was discussed at those meetings.

Senator COHEN. What were the dates?

Mr. GATES. I have those. The Committee will get copies of those memoranda for the record with those entries. I think that they were in—I think one was in May and one was in June. But they were early in the summer, I believe.

Senator COHEN. This is 1986?

Mr. GATES. Yes, sir. As DDCI.

And that basically, the 6th of November, as I say, is basically the last direct involvement that I had before the Iranian arms deal became public.

The only other thing that I might mention is that the question might arise in our minds why the Director on the 21st of November did not reference this memorandum by Charlie and our concerns about the diversion, which at that time was not yet public.

The answer to that is that we did not know any more about any diversion of funds on the 21st of November, or, in fact, on the 25th of November when the Attorney General spoke, than we did on the 15th of October when we passed the memorandum to Poindexter. What we had were some bits and pieces, analytical judgments by the one intelligence officer that there was some diversion of funds. We had nothing more concrete to go on than that, and we didn't consider that very much to go on, although it was enough to raise our concerns to the point where we expressed them to the White House.

The CHAIRMAN. Could I, at that point, ask you a question? It is my recollection that in a conversation—with somebody in the last week or so, that I was given to understand that the Director of Central Intelligence was overseas from about the 16th of November until the day prior to having to come in here to testify on the 21st.

Mr. GATES. Yes, sir.

The CHAIRMAN. And he and I had a conversation on Saturday before he left in which we agreed that our staff would meet and to go over this entire matter in preparation for his testimony. Then, at some subsequent time, I was given the impression that you took the responsibility for doing at least the first draft of a statement for his testimony on the 21st. Is that correct?

Mr. GATES. I took the lead in directing sort of the strategic way in which the testimony would be prepared by the Clandestine Service and the administrative officers in the Agency involved—that had had some role in the project. And it was in my conversation with you, I believe, but whether or not, what I was trying to do was to direct—to do two things. First of all, to have the Director lay out as fully as we knew at the time the Agency's involvement in the Iranian arms deal. But secondly, to have him give in the first part of his testimony, in the prepared testimony, as much as possible strictly a factual account, a clinically factual account of what the Agency did. I did not want him to undertake in his formal testimony a long defense of the policy, to be perfectly honest.

I wanted him to testify, to read a formal statement as the Director of CIA, and to give you a factual accounting. And then in the question and answer session, if he wanted to take on the mantle of member of the Cabinet, NSC member and intelligence adviser to the President, to talk about the policy in the question and answer session. But I wanted to use his prepared statement to get the facts on the table as we knew them then.

And as we have kept the staff advised, as we have continued to gather documents and information ourselves, we have amplified some of the things the Director had to say, we have corrected a couple of things that he had to say, but we gave the factual testimony as we knew it.

Senator COHEN. How could anyone on this Committee ever raise a question in terms of examining Mr. Casey on an issue involving the diversion of funds when there is no record to it in the clinical, sanitized presentation that was made?

Mr. GATES. Well, Senator, my view is that we had so little to go on that apart from warning the White House that we thought there might be a problem, I am not sure it would have been responsible by the Director, in a forum involving a large number of people, to pass along suppositions with regard to what might be going on. We really didn't have very much. We had Allen's memo, and that was about it. Allen's memo and Furmark's call to the Director, and that was basically all we had.

Senator COHEN. Why didn't anyone call Colonel North? He calls the Agency every day, three times a day. Why didn't you pick up the phone, or Casey pick up the phone, dial up Colonel North, and say, "Ollie, what is going on with that fund over there"?

Mr. GATES. Because we thought that it was more important—first of all, we didn't want to ask him factual questions about what he was doing with the funds.

Senator COHEN. Why?

Mr. GATES. Because we knew he was involved, or we assumed, I should say, I assumed that he was involved in efforts involving private benefactors to get money for the contras, and this was one of those areas where we did not pursue obvious lines of questioning because we didn't want to get involved in knowing about the sources of funding.

Senator COHEN. Wouldn't you have wanted to know whether or not funds that you control were in fact diverted to fund the Contras? Wouldn't you have been curious about that?

Mr. GATES. Well, at that point we were fairly sure, or we believed none of the funds that were being paid to us were going to the Contras. And it seemed to us more important to go to the person ultimately responsible and to North's supervisor with these concerns rather than to North himself.

Senator COHEN. Let me just ask you a question. In your judgment then, if you knew the Agency were involved in facilitating the shipment of weapons to Iran for which money would be paid and deposited in an account, and none of the funds that were actually deposited in the account went to fund the Contras; then from your perspective, the Agency had no involvement in the funding of the contras. Is that a correct statement?

In other words, if the money was skimmed off by Khashoggi, Ghorbanifar, or Secord or anybody else, or North himself, and say, "Here, we have inflated the price from $4 million to $20 million or $30 million and we are raking off the top the money from the Iranians and we are shipping it down to the Contras," then as far as you are concerned that does not involve the CIA in any fashion?

Mr. GATES. Yes, sir; that would be our view.

Senator COHEN. So for that reason you didn't want to know whether or not North was taking the money himself, or Secord or any of the other intermediaries, were, in fact, taking a portion of the profit and shipping it down to the Contras?

Mr. GATES. Well, I think it is important to make clear that we had, until North—I am sorry—until Allen came to me on the 1st of October, we didn't have any indication of this at all. And at that point all we had was Charlie Allen's analytical judgment that something was amiss. He didn't have any evidence that North was skimming, or that Secord was skimming, or that somebody in particular was skimming. He didn't even have any evidence in particular of where it was going. He just saw that there was a lot of—there were people complaining of being cheated, that there was unhappiness among the financiers that he was reading about in the intelligence and that there seemed to be the diversion—it looked to him like there was a possibility of the diversion of some funds from this entire enterprise to other things that the U.S. was interested in, including the Contras.

Senator COHEN. That is Charlie on October 14th. Furmark came in where, October 15th?

Mr. GATES. Furmark's call to the Director, which was very similar to Allen's concerns, in terms of unhappy financiers who might blow the operational security of the thing, was, as I recall, on the 7th of October. Essentially the same day that Allen and I talked to the Director.

Senator COHEN. OK. On October 7th, the same day. Did Furmark, to your knowledge, ever mention the unhappiness or the deal was about to be blown, and the fact that money had gone to the Contras?

Mr. GATES. I think that he expressed the concern, although I have not read the memorandum of conversation that the Director prepared. My impression is that he may have mentioned that there was the possibility that some of the money may have gone to the Contras.

Senator COHEN. So as of October 7th at least, the Director was aware that there was the possibility that some of this money may have gone to the Contras, whether out of the fund itself, in which case the Agency would have been directly involved, or prior to going into the Swiss account it went to the Contras, in which case the Agency came to the conclusion that its hands would have been clean as far as any involvement in this operation?

Mr. GATES. That is right. And he knew——

Senator COHEN. But he and you and others did not want to pursue that line of questioning to determine whether or not the money came out of the account or whether it never arrived in the account and whether it ever ended up in the hands of the Contras?

Mr. GATES. We were told that——

The CHAIRMAN. By?

Mr. GATES. I am sorry?

The CHAIRMAN. We were told by?

Mr. GATES. Well, let me go back. It has been my imporession all along that the money that we received to pay back the Department of Defense was very carefully accounted for, and that therefore there was no reason for us to believe that there had been a commingling of funds. And in fact, the Director stated that in his testimony of the 21st.

The CHAIRMAN. Very carefully accounted for by?

Mr. GATES. Our Office of Finance.

The CHAIRMAN. The CIA's Office of Finance?

Mr. GATES. The CIA's Office of Finance. And that the people who are in charge of maintaining those accounts could account for every nickel that went through them. It was only, frankly, this week that I learned and that the Director learned that the money had been deposited in the same account out of which another program was being funded.

The CHAIRMAN. But your testimony is that you made no inquiry after October 1, and until this week, of your Office of Finance, of your General Counsel, or of anyone else in the Agency relative to whether or not your assumptions were correct in that.

Mr. GATES. That is not correct. I neglected to mention that also on the 15th of October I called in our General Counsel and told him, I told him everything that I knew about the project at the time and told him that I wanted him to review all of the aspects of it and to ensure that the Agency was not involved in anything that was illegal.

The CHAIRMAN. Was that before or after the Poindexter meeting?

Mr. GATES. It was before, I think.

The CHAIRMAN. And when did you receive his report?

Mr. GATES. He told me orally when I returned from the overseas that he had looked into things and had not found anything amiss from the agency's standpoint.

[Deleted]

Senator COHEN. Did you ever discuss with the New East Division Chief the setting up of the account to handle this particular shipment, or shipments of the weapons to——

Mr. GATES. I don't recall doing so; no.

Senator COHEN. Did he ever inform you that a separate account was not set up?

Mr. GATES. No, sir. Casey and I learned that on Monday or Tuesday of this week for the first time.

Senator COHEN. Well, when your General Counsel made the investigation, who did the General Counsel talk to?

Mr. GATES. I don't know. He simply told me when I got back from being out of the country that he had looked into it and as far as he could determine there were no problems legally from the Agency's standpoint.

Let me go back again to make the point that even with the call from Furmark and Allen's analysis—

Mr. ELLIFF. Is Furmark a reliable person?

Mr. GATES. I don't know him. I can't answer that question.

We felt we had some fragments. This was the first thing that we had ever seen that suggested there might have been some possibility of a diversion. It was very shaky stuff. What you had was an analytical judgment by Allen with no concrete evidence, and as I point out again in this seven or eight-page memorandum, his concern about this is expressed in one sentence and it doesn't even mention the contras, but simply the possibility of a diversion to other U.S. projects.

And we had this call from Furmark, that the Director took from Furmark. It was at that point that we told Allen to lay all this out in a piece of paper that we then passed to Poindexter when we saw it on paper.

But we felt that we—I mean, frankly, my view is that we leaned forward, in trying to bring a potential problem to the attention of the White House based on some very sketchy data. But it was the first thing that we had ever seen like this, and we didn't want to delay in bringing it to Poindexter's attention.

The CHAIRMAN. But you didn't go to your Office of Finance? You went to the General Counsel and asked them to find out whether your skirts were clean, but you didn't go to the office that was supposed to keep track of the accounts and determine what the facts were?

Mr. GATES. No, sir.

The CHAIRMAN. If you are leaning forward and you are calling the Director and you are calling for a meeting with Poindexter, why didn't you go to the office in the CIA that was responsible for the accounts?

Mr. GATES. Because we had no indication that any of this had occurred out of any CIA accounts.

Senator COHEN. Bear with me for one moment.

You know the history of how this Committee has dealt with the contra issue. How the Congress has dealt with the contra issue. It just strikes me as being somewhat—not the word "naive," but less than forthcoming on the part of the Agency to say, well, as long—here we are using Agency assets and using Agency accounts to help funnel these weapons into Iran for the purposes of getting the hostages and developing a dialogue with the Iranians, and money is coming from that particular project into our accounts, and an allegation comes up, however thin or unsubstantiated, that maybe some of that money is being funneled to other groups—maybe Angola, maybe Contras—and you and others adopt the position, we really don't want to know. All we want to know is, are our skirts clean. And you have a very narrow interpretation of what the Agency's role in all of this would have been.

I must say that your attitude that was taken that we don't want to know what the facts are as long as we are sure that the exact amount that we are responsible for went into that account, and we don't care where it went beyond that, and as far as we are concerned, we are not responsible to NSC, to the White House; we are clean.

I think in terms of dealing with the—you have been up here on a number of occasions to find out how sensitive this issue is on funding of the Contras. Where is the money coming from? We have asked that of the State Department.

Senator COHEN. I recall asking that question at least on one occasion, maybe more, and I got the same response: We don't know how they are getting their money. We have traced it to the Cayman Islands. That is all we have been able to figure out. The Cayman Islands is funding, or the money is passing through the Cayman Islands.

It seems there has been, if not a conspiracy of silence, then a reluctance on the part of the Agency to really pursue where this was all going and advising that we have got a covert operation going here and the fact that we have got some suspicions that the Contras are being funded illegally.

Mr. GATES. Let me address that. We basically were caught, it seems to me, in Catch-22 situation. We had the law telling us to stay the hell away from everything having to do with the Contras and Contra funding and everything else associated with the Contras; and yet, now we are being held accountable for not knowing how they funded it. After the Hasenfus——

The CHAIRMAN. Wait a minute. We are not attacking you for not knowing. We are saying once you became aware that Agency assets had been used——

Mr. GATES. But we had no evidence that Agency assets had been used.

Senator COHEN. Of course you did. You got a proprietary, a CIA proprietary airline moving equipment into Iran. That is an Agency asset, I assume. You are talking about Agency assets being used to ship equipment pursuant to a Presidential policy with money going into an Agency account.

Mr. GATES. But the financial arrangements associated with the proprietary were all accounted for. In other words, we——

The CHAIRMAN. How do you know they were accounted for?

Senator COHEN. You said you only found out this week that there was a commingling of funds.

OK. Well, you finish your statement.

Mr. GATES. Well, I was just going to say that this is an area where I realize that it is very difficult for a lot of people to accept that when it came to funding of the contras Agency people, and I would say here from the Director on down, actively shunned information. We didn't want to know how the Contras were being funded; in part, because we were concerned it would get us involved in crossing the line imposed by the law.

And so we actively discouraged people from telling us things. We did not pursue lines of questioning. We knew—you know, we are not dumb. We knew the Contras were getting a lot of money. And we heard all kinds of stories about where they were getting it. From private benefactors, from several foreign countries—but it was on the 1st of October that we got the first indication that there might be something otherwise involved.

And we, to be perfectly honest, I think we made, and I would have to go back and check, this should not be the final word. But I guess for my part, everything that I saw and what Allen was telling me was that our accounts were straight but that somebody else was involved in this. And I felt like it was important for us to apprise the White House as early as we could that we though they had both an operational security problem, which is what we had the greatest in; that there were a lot of unhappy people out there that knew something about this project, any one of whom could blow the whole thing at any time; but, also, we were concerned that there was a possibility—and that is all it was, was a possibility—some money was being diverted to other things. And that is all we had, and I guess that is the thing that I would just stress strongly.

We didn't have very must to go on, but it was the first thing that we had that was other than just kind of something out of thin air, and we wanted to bring that to Poindexter's attention as quickly as possible.

Senator COHEN. But you did have a little to go on. You wanted to stop right there. From your perspective, that was the best way to keep the Agency out of the business of any allegation that you were somehow remotely connected to funding of the contras.

Mr. GATES. Yes, sir.

The CHAIRMAN. I want to complete the question that I started on.

Did you see any draft of the Director's testimony to this Committee prior to the final draft?

Mr. GATES. Yes, sir.

The CHAIRMAN. Did you see any draft which contained any reference to the Contra diversion?

Mr. GATES. No, sir.

The CHAIRMAN. Did you see all drafts prior to the final draft?

Mr. GATES. I can't be sure of that; no.

The CHAIRMAN. Why can't you be sure of it?

Mr. GATES. I saw two or three drafts, but it was changing sort of hourly. Pages were being inserted and taken out, and I did not see all of that.

The CHAIRMAN. You saw no draft with any reference to the Contra diversion in it?

Mr. GATES. No, sir.

Mr. MCMAHON. Are you aware, Mr. Gates, of a meeting that was held in New York between Mr. Furmark, George Cave and Charlie Allen on the subject of the diversion?

Mr. GATES. I only learned about it—I may have known about it at the time and forgotten. But I recall it only because I read about it in a chronology in the last couple of days.

Mr. MCMAHON. Were you aware of any memoranda that were written as a result of those meetings? Or are you aware of any?

Mr. GATES. I have not read any of the memoranda from the Furmark meeting. From the Furmark calls to the Director or that meeting, as far as I can recall.

The CHAIRMAN. Bernie, I have to inject just one question that I should have asked earlier.

Mr. Gates, have you discussed any part of the testimony of any other CIA witnesses who appeared before this Committee with them prior to your appearing here today?

Mr. GATES. Only to the extent that Mr. George indicated to me last night that it seemed to him you all knew more about this than we do, but that was all.

The CHAIRMAN. Is Mr. George the only witness who has appeared here with whom you have discussed this testimony?

Mr. GATES. Yes, sir. Now I have talked to others who have testified here to refresh my own recollections; for example, Mr. Allen, and Mr. Cave, and the NE division chief I talked to Mr. Cave and the NE division chief to learn how the materials that had been used in the—or had been prepared for the intelligence briefings had been used in the meetings.

The CHAIRMAN. Did all those discussions take place prior to their testifying before this Committee?

Mr. GATES. No. But they made no reference—in answering my factual questions, they made no reference to their testimony here.

Senator SPECTER. Can I interrupt, Bernie?

There was just a question of whether you know of the memorandum arising from the Cave-Allen-Furmark meeting, and you said you read no such memorandum. Do you know of any memorandum?

Mr. GATES. I think that such a memorandum may exist. In fact, I may have received a copy of it; but I don't recall reading it. There may well be such a memorandum.

I have seen a lot of papers in the last few days. But I think that if there are——

Mr. MCMAHON. If there were such a memorandum and that memorandum contained information which more explicitly laid out the connection, based on discussions with Mr. Furmark, the diversion of funds for the contras and the mechanism that diversion used and the existence of that diversion back prior to the January 17 finding, would your conclusions be the same as they are now with respect to the investigation which you may have instigated and the conclusions about involvement or noninvolvement by the CIA, or would that add a degree of urgency or perhaps heighten the concern which you felt about informing the Committee on the 21st of November?

Mr. GATES. I don't know the answer to that without reading such a memorandum. It would depend on how confident he appeared of his judgments, how specific he was—without knowing more precisely what he may have said, it is hard for me to judge.

Senator SPECTER. Bernie, may I pursue the question of whether Mr. Gates got a memorandum?

Mr. Gates, the first question was, were you aware of a memorandum arising from the meeting between Mr. Cave, Mr. Allen and Mr. Furmark, and your response was, as I recall it, that you didn't read such a memo. Then I asked you, in light of your response to the question being unresponsive, if you received the memo; and you said you may have received a copy but you don't remember.

Now will you focus on the matter for a minute and see if you can recollect whether you know of such a memorandum.

Mr. GATES. What I am trying to convey is that first of all I have seen an awful lot of documents in the last few days that are being compiled for the Committee and for the Justice Department.

Senator SPECTER. Well, this is no ordinary memorandum.

Mr. GATES. Well, if the memorandum contains the kind of information that Mr. McMahon just described, I have not read it.

Senator SPECTER. You are sure of that?

Mr. GATES. Yes, sir. I do not recall ever seeing any reference to CIA involvement in a diversion of funds prior to January.

Mr. MCMAHON. Not CIA involvement.

Mr. GATES. Or diversion of funds prior to January. But, by the same token, what I am trying to say is that among all of these documents I have received, I think in the chronologies that I have seen a reference to the existence of such a memorandum, about the possibility of a diversion to the Contras. But I don't recall reading the memorandum, itself. That is my problem. I may have read a short summary of that memorandum that did not contain details, but I don't recall reading the full memorandum, itself.

Senator SPECTER. When did you see such a summary?

Mr. GATES. Yesterday.

Senator SPECTER. What were the circumstances of the preparation of that summary?

Mr. GATES. We undertook—approximately a week ago, I directed our Inspector General, assisted by the General Counsel and the Directorate of Operations, to put together—to undertake a fact-finding investigation inside the Agency, to bring together in one piece all of the materials and all of the information relating to the Iranian arms transactions and also possible diversion of funds.

That fact-finding investigation is still going on, and we expect it to be complete next week. But knowing that the Director has formal hearings next week, we asked on Monday I believe that a chronology be prepared that could be used in the preparation of his testimony. And the chronology that I referred to is the one that was prepared, the first draft was prepared by Mr. Allen, but it was coordinated and revised and added to by the Inspector General and the fact-finding team, as well as by the General Counsel and the Clandestine Service.

Senator SPECTER. And pursuant to the preparation of that chronology, you think you read a memorandum which refer to diversion of funds to the Contras?

Mr. GATES. It is in that chronology that I have the only recollection of a memorandum flowing the Allen-Cave meeting with Furmark in New York.

Senator SPECTER. Did you read that summary yesterday?

Mr. GATES. Yes, sir.

Senator SPECTER. And what did that summary say as to the diversion of funds to the Contras?

Mr. GATES. It simply, as I recall, it simply said that there had been—that Furmark described the unhappiness of the financiers, Khashoggi and Company, and that he had raised the possibility that there may have been some diversion of funds to the Contras.

Senator SPECTER. Having seen that summary, did you than seek to read the memorandum?

Mr. GATES. No, sir. I have not had a chance to do that.

Senator SPECTER. Is there any other writings of any sort in records of the CIA, to your knowledge, referring to the diversion of funds to the Contras from the Iranian operation?

Mr. GATES. Other than whatever memoranda may exist from the conversations with Furmark and the Charles Allen memorandum, I am not aware of any others.

Senator SPECTER. Now you are referring to the one meeting among Mr. Allen, Mr. Cave and Mr. Furmark?

Mr. GATES. The director also talked to Mr. Furmark on the telephone and there may be a memorandum of conversation for that. I have not read that, either.

Senator SPECTER. When did the Director talk to Mr. Furmark on the telephone?

Mr. GATES. I think on the 7th of October.

Senator SPECTER. And what was said in that conversation that you know about?

Mr. GATES. The only thing that I know was that Furmark raised with the Director the unhappiness of some of the financiers and the possibility that the entire arrangement with the Iranians might be exposed by one of those participants.

Senator SPECTER. In that telephone conversation on the 7th of October was there a reference to the diversion of funds to the Contras?

Mr. GATES. I don't know. I don't recall. I have not seen the memorandum of that conversation. The Director described it to me orally.

Senator SPECTER. Is the memorandum concerning that conversation in the summary that you have read?

Mr. GATES. I don't honestly recall.

Senator SPECTER. Well, didn't you read this summary just yesterday?

Mr. GATES. Yes, sir.

Senator SPECTER. But you don't recall what you read yesterday?

Mr. GATES. The summary is about 20 pages long.

Senator SPECTER. I know, but you read it yesterday.

Mr. GATES. Yes, sir.

Senator SPECTER. You don't recall what you read yesterday?

Mr. GATES. Not precisely. Not on that particular question.

Senator SPECTER. Have you know now described all of the writings which referred in any way to diversion of funds to the Contras?

Mr. GATES. I have described those of which I am aware. The only ones of which I am aware.

Senator SPECTER. Aside from memoranda, do you have any knowledge of diversion of funds to the Contras other than what you have just testified to?

Mr. GATES. No, sir.

Senator SPECTER. Thank you.

Mr. MCMAHON. I just want to see if I understood what you said on Mr. Casey in the November 6 meeting.

Mr. GATES. Excuse me, Mr. McMahon. If I could just go back to Senator Specter for a moment. I would like to distinguish that what I spent most of my time preparing for this testimony for was those events over the past year in which I personally participated, and on those my memory is obviously very clear. I paid less attention to the other elements involved in this in which I was not a direct participant. And that is essentially why those were not the parts of the chronology or the other papers that I looked at. I was not concentrating on those.

Senator SPECTER. Mr. Gates, I appreciate that, and I can understand that you would focus on the events in which you were a participant and where you can give us direct knowledge.

But I believe that where there is information about diversion of funds to the Contras that that would be so unusual and so much the center of this entire matter, it would seem to me that that would stand out in your mind, especially if you read something yesterday.

Mr. GATES. Well, it does to the extent that I recall that Furmark made some reference to that. But the specific things that he said I do recall and would not try to——

Senator SPECTER. Well, there is one memorandum you testified to where Furmark made some comments. You testified about that, and my follow-up question was, was there any other document in writing?

Mr. GATES. And I think there was a memorandum of conversation of the telephone call that the Director received from Furmark on the 7th.

Senator SPECTER. OK. Thanks.

Mr. MCMAHON. The two events in which you personally participated, as I understand what you have said so far, is that on the 15th of October you were with the Director and you saw Mr. Poindexter?

Mr. GATES. That is correct.

Mr. MCMAHON. And at that point you had a conversation about the matter of security of the program?

Mr. GATES. Yes, sir.

Mr. MCMAHON. Could you describe in more detail what precisely you told Mr. Poindexter, or recommended, at that meeting on 15 October?

Mr. GATES. Well, as I recall, it basically was to hand over the memorandum, to tell——

Mr. MCMAHON. This was the memorandum in which there is——

Mr. GATES. That Mr. Allen had prepared.

Mr. MCMAHON. No speculation as to where the funds were being—the purpose the funds were being diverted for, but just the fact that there was diversion?

Mr. GATES. There was the possibility of a diversion of * * * as you will see when you get the memorandum, the way it is described in the memorandum is that if Ghorbanifar decides to go public, here are the kinds of things he might be able to say. One of them was to reveal the information about the U.S. contacts with Iran and the sale of arms. Another was to describe certain U.S. persons, as I recall, in an unflattering way. And the last of 4 tick marks was that Ghorbanifar might raise the possibility of the diversion of funds to other U.S. projects.

So he, in effect, is putting, is surmising what Ghorbanifar might be able to testify to.

Mr. MCMAHON. But no speculation as to diversion of those funds for any particular purpose?

Mr. GATES. It does not mention the Contras.

Mr. MCMAHON. Did that subject come up at the meeting, where the money might be going?

Mr. GATES. I believe the primary focus, again, of the meeting, very much as in the case of the memorandum itself, was on the operational security of the entire enterprise, and the Director's belief that they ought to make the entire enterprise—prepare themselves to make the enterprise public sooner, rather than later.

There was, I am sure, although I cannot recall specifically, I am sure there was some reference to the concern expressed in the memorandum about the possible diversion of funds.

Mr. MCMAHON. Was it your impression that Poindexter was told to have his General Counsel review the entire program?

Mr. GATES. I do not recall—first of all, I am vague on the timing of the first time--of the specific timing of both of the representations that were apparently made to Poindexter on having the White House Counsel look at it.

I don't—I was not present at the first one. I was at a session that I believe was on the 6th of November in which the Director raised the issue, and that was the session at which, in my presence, Poindexter said, "I don't trust Walliston to keep his mouth shut."

And it is Casey's recollection that he raised that with Poindexter. I don't know when that was, but it probably was while I was in the Middle East.

Mr. MCMAHON. Prior to November 6, then, in your presence that issue was not raised?

Mr. GATES. That is correct.

Mr. MCMAHON. Was there any attention given, after you had brought this to the attention of the National Security Adviser with the concern that it would be made public, of informing the Intelligence Committee at that point?

Mr. GATES. No, because we were still under the strictures of the Finding.

Mr. MCMAHON. Was there any discussion as to lifting those strictures since the timely notification was expected, as we understand it, to have expired at some point?

Mr. GATES. No. Frankly, it is my judgment that the White House retained—that the NSC retained some confidence that they could keep this operation going longer than I believed was possible. That the Iranians would continue to deal with them despite the public disclosures, and so there was no willingness.——

Mr. MCMAHON. The rcommendation was made to the National Security Adviser for the President to make a public statement on the subject?

Mr. GATES. I don't recail that we specifically said the President. There was a recommendation that the facts surrounding the whole enterprise be made public, and I think, in fact, we suggested that the President do it.

Mr. MCMAHON. But there was no discussion about informing the Intelligence Committee, or was it discussed and rejected?

Mr. GATES. I don't believe—I don't recall any discussion of it.

Mr. MCMAHON. At the November 6 meeting, then, was there any discussion between, or briefings or conversations or briefing notes prepared for you or for the Director for that meeting, or any discussions which would have udpated you on what had occurred on this subject since your departure for the Middle East?

Mr. GATES. Not that I recall, no.

Mr. MCMAHON. Could you more precisely describe what transferred in that November 6 meeting?

Mr. GATES. My only recollection from that meeting is that one statement about the desirability and advisability of having the White House Counsel look over the whole thing, and Poindexter's response.

Mr. MCMAHON. There was no reference, to your recollection, to having Mr. North obtain counsel?

Mr. GATES. I don't think so. I think that was raised, I think the Director told me he raised that the first time he talked to Poindexter when I was not present.

Mr. MCMAHON. Why would he make the recommendation that Mr. North should get counsel?

Mr. GATES. I don't know why he said that. Presumably, his belief that if there had been a diversion of funds that Mr. North had in some way been involved.

Mr. MCMAHON. Why would he come to the conclusion?

Mr. GATES. That is pure speculation on my part.

Mr. MCMAHON. Mr. North's name just came out of a hat? Why would his name be associated with a diversion of funds?

Mr. GATES. Mr. North had clearly been a central figure in organizing and operating the Iranian channel, and he obviously, or by all accounts—so obvious to those who read the newspapers—had played a key role in maintaining some contact with the Contra leaders. So I would assume that that was the basis for the Director's judgment, but that is pure speculation on my part.

Mr. MCMAHON. But you would assume, then, around, sometime prior to the 6 November meeting that the Director had come to some conclusion that there was a problem with Mr. North to the extent he ought to get counsel and that problem was related to the diversion of funds in some way, and the connection with North and the Contras was the likely reason why those three events were related to each other?

Mr. GATES. I don't know whether, and again I am trying to read the Director's mind in the sense that I wasn't there when he did it or before he did it to know his thinking. I can only assume that it had to do with the whole range of activities on the Iranian affair. The question of the arms embargo, the question of, you know, a whole series of laws that might have been involved. I am not sure that he would have differentiated out only the diversion issue.

And in fact, it is only my recollection that he mentioned that. Again, I wasn't there.

Mr. MCMAHON. Are there memorandums for the record of the meetings which you have described, the October 15 and November 6 meetings with the White House?

Mr. GATES. No. I don't have any.

Mr. MCMAHON. Was there anyone else in attendance at those meetings?

Mr. GATES. I don't recall anybody else being present on the 6th. I don't know who was present, or whether anybody else was present in the meeting where I wasn't in attendance.

Mr. MCMAHON. To your knowledge, is there any documentary evidence or other source of confirmation of the information passed to Mr. Poindexter with respect to the diversion of funds?

Mr. GATES. Only the Allen memorandum, as far as I know.

Mr. MCMAHON. Was a copy of that left with the White House?

Mr. GATES. Yes. We gave it to Poindexter.

Mr. MCMAHON. Do you know if any other memoranda were ever given to the White House on the subject? Memoranda of later meetings or anything to do with the diversion of funds?

Mr. GATES. I am not aware of any. There may have been some once the Attorney General made his revelation. We may have been providing information to the White House on our accounts or something, but I haven't seen any.

Mr. MCMAHON. If the fact of the possible diversion of funds had come to the attention of a mid-level Agency person, or persons, during the period when it took place, or allegedly took place, let me say that, would you have expected that that would have been brought to someone's attention within the Agency? Or was there any expectation or understanding about what you have said about Mr. North and his obvious relationship with the Contras, of his efforts to raise money, was that a general alert that everybody was on in terms of reporting problems?

Mr. GATES. I would say the more general alert was to not get involved in funding issues related to the Contras. I think that it would have been—you know, again it is pure speculation on my part. I would say it is more likely that it would have been brought to someone's attention if it appeared that there was some Agency involvement in it.

Mr. MCMAHON. So if it were information that was obtained that just related to how the Contras were funded, whether through diversion or whether through the same parties that were dealing in Iran program negotiations for operational support, that you would expect because of this restriction—not restriction, general prohibition against seeking out information on the funding that that would just sort of stay with that person, rather than having——

Mr. GATES. Well, I really don't know. I can't look into the minds of everybody in the Agency who might have had some——

Mr. MCMAHON. Just your senses, that is all.

Mr. GATES. I don't know. We have one piece of evidence, and that is, that the one person who did have access [deleted] and did think he saw something like that did bring it to our attention. So, you know, it is hard for me to say.

Mr. MCMAHON. What can you tell us about Mr. Secord, in your knowledge through your association with this program?

Mr. GATES. Other than reading in the public media that Second played some role in the funding of the Contras business and seeing the intelligence and being told that he had some role in the funding of—in these arrangements, these arms arrangements with the Iranians, that is the extent of my knowledge of his involvement.

Mr. MCMAHON. And this is all just in the last week or two?

Mr. GATES. No, I would say that the knowledge that Secord was involved in these transactions I probably knew sometime ago from intelligence reporting.

Mr. MCMAHON. But as far as your briefings on the program and your understanding of the arrangements in the program, you were not aware of Secord's role, of what that role was?

Mr. GATES. No. When I saw the scenario, for example, in February or March, whenever it was, there was no mention of the modalities, about how all this was to be done, who the intermediaries were; in fact, it was not until—as I recall, it was not until the Director told me about his conversation with Furmark that I had any idea Khashoggi was involved.

Mr. MCMAHON. So, in your briefings or——

Mr. GATES. I take that back. It was not until Allen briefed me on the 1st that I had any idea Khashoggi was involved.

Mr. MCMAHON. Allen briefed you on the 1st of October?

Mr. GATES. Yes.

Mr. MCMAHON. But you were still unaware of Mr. Secord's role in the funding process of the program?

Mr. GATES. No, I think——

Mr. MCMAHON. Are you aware of it now? What is it? What do you think his role was?

Mr. GATES. I don't know precisely what his role was. I have assumed simply that he was—I had the impression from either Charlie Allen telling me or reading the intelligence that Secord was involved as one of the middlemen in this thing in some respect; and, frankly, at this point my knowledge still doesn't go much beyond that.

Mr. MCMAHON. Could we go back to some events in November and December 1985? Were you ever made aware of any events related to this activity in that period in terms of Agency aircraft, of flight clearances, or Findings that were written—any of that?

Mr. GATES. According to the notes made by McMahon's assistant of the meeting of December the 5th, there was a reference in that meeting, at which I was present, to the fact that an Agency airplane had made some trip to Iran. Beyond that I did not have any information.

Mr. MCMAHON. The meeting of December 5?

Mr. GATES. Yes.

Mr. MCMAHON. That was the one where you talked about intelligence support to the——

Mr. GATES. That is where McMahon asked a number of questions, in my belief to prepare himself for the NSC meeting of the 7th.

Mr. MCMAHON. But you were not aware of any Finding or any operational support?

Mr. GATES. The only thing that I recall, I have a very vague memory, probably sometime in December, that we had tried to get a Finding that provided ex post facto protection for an event that had already taken place. And my memory of it was that the White House had objected. That the lawyers said that was too broad and that couldn't be done. And that is the only thing I remember.

Mr. MCMAHON. Do you recall any analysis that was provided by the Agency to those in the White House or those involved in the programming of the National Security Council staff of the people who were involved either as go-betweens or as middlemen or——

Mr. GATES. I am sorry. Do I recall any analysis of what?

Mr. MCMAHON. Of the individuals who were involved in the Iranian side or as go-betweens, as to their reliability, as to their expectation that our expectations would come true in dealing with these individuals, or warnings, was anybody concerned——

Mr. GATES. My only recollection was that fairly early on that the clandestine service folks identified Ghorbanifar as particularly, I guess the specific thing they said was he was a liar. That he was an unreliable character, in that regard.

Mr. MCMAHON. So you don't recall any specific request for Intelligence Agency support in analysis of the individuals that were being dealt with on the Iranian side or as the middlemen by those who were in the operation?

Mr. GATES. Being asked of the Directorate of Intelligence?

Mr. MCMAHON. Yes.

Mr. GATES. No, I don't think so. The only biography or analysis of an individual that I recall was the reconstruction from these notes.

Mr. MCMAHON. The issue is, of course, that they were dealing with people with some hope that they would be successful in using these as opportunities to open up a political dialogue.

Mr. GATES. Again, remember that in the finished intelligence product there was a fair amount of people like Rafsanjani, and Musavi, and Montazeiri.

The CHAIRMAN. Bernie, may I interrupt at this point?

Mr. MCMAHON. Yes, sir.

The CHAIRMAN. I wonder if we couldn't take a little break here and excuse Bob for 15 minutes or so, a half hour, whatever it might take.

We have a discussion that started in the business meeting this morning that we wanted to pick up.

[Recess.]

The CHAIRMAN. Mr. Gates, I want to remind you that you continue to be under oath in your testimony.

Mr. GATES. Yes, sir.

Mr. MCMAHON. I had finished with the question of had there been any requests from those who were conducting the operation for a special analysis, and I think the answer to that was no, other than the normal.

Mr. GATES. Not that I am aware of.

Mr. MCMAHON. Okay. The question was aimed at the issue of were the people who were really doing this really getting good intelligence support in terms of asking for it.

Mr. GATES. I think the answer to that is that only to the extent they were drawing on finished intelligence prepared wholly independent of the project.

I might, if I may.

Mr. MCMAHON. Yes.

Mr. GATES. One of the questions that has arisen is why we did not pursue more vigorously internally the investigation between the 1st and the 15th. And I would just like to say that what we were trying to deal with at that point was the balancing of four different factors. The first was what we regarded as the extremely fragmentary nature of what we had. We still had no evidence. We had an analytical

judgment and we had an assertion by a lawyer up in New York. So that was the first factor.

We were concerned by what we had heard, but as far as we were concerned, it was pretty shaky.

Second, continuing to maintain the compartmentation of the entire undertaking. It was still actively underway at that point. The strict requirements placed on us by the White House for compartmentation were still in effect at that point, and an internal investigation would have required breaking that.

Third, as I referred to earlier, our desire to avoid the contra funding issue itself.

And yet, fourth, our desire to warn the White House or to alert Poindexter that we had heard these disquieting reports that, in our view, bore further investigation by him.

So what we were involved in was a balancing of those four factors that led me to involve our General Counsel and have him review the thing from an internal standpoint, breaking the compartmentation to involve him, and the decision to carry the information to the White House.

Mr. McMAHON. When you first read the Finding, and I guess that was after the White House had delivered a copy to you in October, was this the first time that you were aware that Congress was not being notified?

Mr. GATES. No, I had been told that orally, earlier.

Mr. McMAHON. From the time you were first briefed on the program, was there any concern or discussion concerning the continued adherence to that restriction which was in the 17th January finding of non-notification of the Congress?

Mr. GATES. Well, I think that there was a general concern among a number of us, while continuing to abide by the requirement, that when the Finding was briefed on the Hill that it would have a serious impact on our relationship with the Oversight Committee.

Mr. McMAHON. Did you ever look into the background of why that unique restriction—unique to that covert action and applied to no other in our experience—why that came to be? Why that paragraph was in that particular document?

Mr. GATES. No, I didn't. The Finding had been in effect nearly 4 months when I became DDCI and the operation was well underway at that time.

Mr. McMAHON. Did at any time you advise anyone higher than you in the organization, in the agency, or in the White House that that was a bad policy and that it should be changed?

Mr. GATES. Apart from raising the concerns about the implications of it for our relationship with the Committees in a general sense, no.

Mr. McMAHON. And what about the legal aspects, of the requirement to notify Congress, did you ask for an independent legal analysis of the validity of that?

Mr. GATES. No. Because in the preparation for my confirmation hearings I had done a good deal of reading about this provision of the Act, and it seemed to me that there was a strong case that this was a gray area between the Executive branch and the legislative branch; that, in effect, there had been an agreement to disagree; and the fact that there is implicit in the law, in saying that when the President doesn't notify he will undertake to do so on a timely basis, by inference, recognition by the Congress that the President had the constitutional right to withhold notification.

Mr. McMAHON. Do you believe that that Finding, by virtue of it having authorized certain activity after the 17th of January, retroactively ratifies any of those activities which occurred before January 17?

Mr. GATES. I don't believe it does.

Mr. McMAHON. So that any activities pursuant to that objective which had been conducted prior to the 17th of January would be considered by you to be illegal activities under the law if they involve the expenditure of funds?

Mr. GATES. I don't know the answer to that.

Mr. McMAHON. Has anyone ever looked into the question of were there activities which involved the expenditure of funds prior to that Finding? Has anyone done any research?

Mr. GATES. I don't believe that prior to the initiation of our fact-finding investigation of the entire episode that that was addressed. But I don't know the answer. That is a supposition on my part.

Mr. McMAHON. In the process of determining whether operational support is operational support that should only be provided when authorized by a Finding addressing that issue, if there is a difference of opinion as to whether that operational support is or is not that which should be covered by a Finding, how is that difference of opinion resolved?

Let's assume that some operational activity was ongoing or proposed and someone raised an issue as to the propriety of that without a Finding, how would that be resolved?

Mr. GATES. It would be referred to the General Counsel and I believe that the decision would, obviously, be the DCI's. I believe that he would defer to the recommendation of the General Counsel.

Mr. MCMAHON. And assuming that the General Counsel felt that that activity should be covered by a Finding, but before it was determined by the DCI, what would the normal procedure be? Would that activity cease while this discussion was going on, or would it be permitted to continue? What are the rules within the Agency with respect to that?

Mr. GATES. I can't think of an instance in which that has taken place, in which the issue arose, other than the question of this flight of November 25.

Mr. MCMAHON. Well, assuming that it did.

Mr. GATES. I would assume that if the General Counsel determined that it clearly was a case that required a Finding that any activity that had already been initiated would be stopped pending——

Mr. MCMAHON. And if it continued it would be considered by you to be an illegal activity?

Mr. GATES. Well, the honest answer is, I don't know, not being a lawyer.

Mr. MCMAHON. Well, assuming the General Counsel had made the determination this activity required a Finding.

Mr. GATES. I would assume, based on not knowing the law—I mean, not being a lawyer, that it would; yes.

Mr. MCMAHON. Are you equipped to make any determination yourself, as to whether certain kinds of operational support would or would not be that which would require a Finding, or would you refer to a lawyer in every case?

Mr. GATES. I would defer that. I would defer to the General Counsel, especially since, frankly, my own background is not one that would give me a lot of familiarity with that.

Mr. MCMAHON. But the procedure is once the General Counsel has made such a determination, then that in conjunction with the DCI's decision is what is binding and the final decision in these cases?

Mr. GATES. Yes, in all the cases that I am aware of.

Mr. MCMAHON. Do you recall if anybody in the National Security Council, by name, specifically asked for the SNIE on Iran?

Mr. GATES. I do not remember. We might be able to find that out from our records. Which SNIE is that? The one of 1986 you mentioned?

Mr. MCMAHON. That is the one that you mentioned, in 1985.

Mr. GATES. The one in 1985?

Mr. MCMAHON. Yes.

Mr. GATES. All right. It was a memorandum to Holders to an earlier estimate, so it essentially was an update. But I will find that out.

Mr. MCMAHON. The reason we are trying to find that out is tracing the decision as to who it was that were proponents of the program.

Mr. GATES. Yes. I will find that out and will let you know.

Mr. MCMAHON. Can you tell me who it was in the agency who was in charge of, if you want to call it, the operation of this particular Iranian covert action?

Mr. GATES. I would say the most directly involved senior manager would have been the Chief of the Near East Division.

Mr. MCMAHON. Not the Director of the DDO? How much would he be involved in the management and oversight of this operation?

Mr. GATES. To the degree that all the activities of the Directorate of Operations are under his purview and his responsibility, he would have that management responsibility. But it, in my judgment, would not be more or less than any other activity of the Directorate.

Mr. MCMAHON. Could you tell us all about your contacts with Lt. Col. North, and go back in far in time as necessary to give a complete accounting, as best you can, of those occasions on which you had contact with North, your relationship with North, and a description of North's relationship with the Agency, and the authority with which—the authority that North had with respect to the agency and direction of agency personnel?

Mr. GATES. I first became acquainted with North in 19—I think 1982, with the creation of the Crisis Preplanning Group, which is a sub-cabinet-level group that was established to, in effect, be crisis monitors for the Administration in foreign policy. That group was chaired by the Deputy Assistant to the President for National Security Affairs, and the core group consisted of the Under Secretary of State for

Political Affairs, the Executive Assistant to the Chairman of the Joint Chiefs of Staff, the Assistant Secretary of Defense for International Security Affairs, myself—I guess that basically is the core group, about five people.

We would then bring in, depending on the crisis, whether it was Lebanon, or Libya, or Grenada, or whatever—we would bring in specialists from our own agencies and from the NSC.

North, when that group was formed, and I think it was in 1982, was, in effect, the Executive Secretary of that group. He organized the meetings. He set the agenda, and so forth. And virtually my only contact with North while I was DDI was in the context—I think I can say, almost exclusively in connection with that Crisis Preplanning Group and the various crises that we dealt with in terms of providing substantive support, receiving requirements for analytical assessment, and that sort of thing.

I knew North professionally and we met at a couple of official dinners, but there was no other personal relationship with him.

My attitude toward tasking by North——

Mr. McMAHON. I am sorry. Does that complete the chronology of your——

Mr. GATES. Well, once I participated in a meeting at which North was present in late January, at which we were tasked to [deleted] and he indicated what that tasking was. And there were other contacts of that sort, but I can't remember specific meetings or, you know, exchanges, if you will, of any significance subsequent to that. I am sure I did meet with him——

Mr. McMAHON. How did it happen that Lt. Col. North came to be having lunch with the Director? Is that a normal event? Certainly there was a meeting in Europe but there were a number of such meetings over time in this program, dozens or so. It seems a bit unusual. If you can explain the circumstances of why Col. North would show up at a luncheon meeting with Director Casey and yourself?

Mr. GATES. The meeting was arranged without my participation, so I don't know the circumstances that led to the lunch. I know that the Director was interested in finding out what had gone on in Frankfurt and maybe getting a report from North on the overall status of the program.

As the couple of instances that I have mentioned indicated, North, periodically, would come out to the Agency for meetings; and at the ones I participated in, a couple of them, he made the request for intelligence, and we looked over what had been prepared, and he would indicate whether that was satisfactory from their standpoint.

But in terms of why we ended up in the meeting on the 9th, how that was arranged, I just don't know.

Mr. McMAHON. Were you aware of North's operational relationship with the members of the agency in the conduct of this program, and his directives, and his directions, and his day-to-day management of this program with agency personnel?

Mr. GATES. I knew that he was directly involved with our people and was conveying instructions. It was my impression, and it was only an impression—and again, I think this has to be seen in the context that this thing had already been going on for several months when I arrived on the scene—that he was acting on instructions from his superiors.

Mr. McMAHON. How was that determined? That was just as assumption?

Mr. GATES. Well, there were, you know, the regular meetings between the Director and the National Security Adviser, and this program occasionally was reviewed regarding where we were. I don't know of instances—I don't know personally of any instances where the Director or MacMahon or I may have said that, "We are doing this at Ollie's request," and Poindexter or McFarlane came back and said, "Well, I didn't authorize that."

So I just have assumed, and I will only speak for myself, that he was conveying instructions.

Mr. McMAHON. But, in your view, then, there was a loop between what Ollie was doing—Oliver North was doing and then that happened in the Agency and what directives he gave and a feedback to the Director or yourself, who then fed that beak to Colonel North's—Poindexter as a check on——

Mr. GATES. I wouldn't say it was a systematic or an organized thing, but in the course of events there were enough contacts with the National Security Adviser related to the program that it was clear that, at least on the occasions that I am familiar with, that North was certainly acting consistent with instructions.

Mr. McMAHON. Did you ever have any indication, either from your experience or anything you heard from anybody in the Agency or otherwise, that North did or was prone to act on his own beyond his charter or his portfolio?

Mr. GATES. North was perceived as a very aggressive hard-charging individual, but on any of the significant operational kinds of things involved, I never saw any indication that he was acting beyond the guidance that he had been given. I just had no instance to, or no opportunity to see that.

Mr. MCMAHON. So from your experience and your observation and knowledge of North dealing with the Agency, it would come to you as a surprise that he would be conducting an operation as significant as a diversion of funds to the Contras without authority?

Mr. GATES. Well, that would be pure speculation on my part.

Mr. MCMAHON. Just speculating from what you know.

Mr. GATES. Yes.

Mr. MCMAHON. It would be a surprise?

Mr. GATES. Yes. On something of that nature, yes.

I must say that I approach this with a certain—I approach tasking from the NSC with a certain degree of skepticism that maybe some of my colleagues don't share, having been on the NSC for six years——

Mr. MCMAHON. Can you describe that skepticism?

Mr. GATES. And knowing that there is sometimes the affliction on the NSC staff to sometimes request things in the name of one's boss that, in fact, are the idea of the individual involved. Now all my experiences with that have been in the form of people requesting assessments and studies in the name of the President or the name of the National Security Adviser, or asking for the allocation of personnel resources to work a specific substantive problem, and my reaction to those has been I will do that when I get a directive from the National Security Adviser.

So there was nothing significant that came along in any of the operational decisions that I was aware of that led me to question that or to be skeptical in that way with North. But let's just say that—for example, on the question of the intelligence materials that were being provided, I did not accept at face value initially the requirement that was laid on with the specificity with which it was laid on.

That is when I said I did not want to give that detailed or precise a data, and then was told to do otherwise.

Mr. MCMAHON. Has there been any Agency involvement by anyone that you are aware with Col. North's activities in Central America which has been conducted without proper authority?

Mr. GATES. Not that I am aware of.

Mr. MCMAHON. You had something?

Mr. ELLIFF. I have one line, Mr. Gates.

You said that in the period after October 7th and 9th and the times of the meetings of October 15th with Admiral Poindexter and again at November 6, there was significant concern about the operational security of the operation.

Could you describe for us what your understanding was of the status of the operation, and the nature of the operational security requirements and how intense that concern might have been, and what would have been discussed about how to maintain the operational security and secrecy of the operation?

Mr. GATES. Our concerns about the operational security were so high because we had some knowledge, for example, that [deleted.] We knew the Israelis were aware. We knew, based on the briefing that Charlie Allen gave—that Charles Allen gave to me, and subsequently to the Director, and subsequently in his paper—that there was a good deal of unhappiness among those involved in financing the operation. We knew from Furmark's conversations with the Director that there were a number of people in business who had some awareness of the whole thing. And, frankly, it looked to us like a bomb just waiting to go off; there were so many people involved by that time.

And I would say that it was our judgment that operational security could no longer be maintained for any period of time, and that was why we recommended that they prepare a public statement laying out the entire enterprise.

Mr. ELLIFF. Was there any discussion as to reasons as to why it would not be desirable to go public with it at that time because there were other interests at stake?

Mr. GATES. The NSC—the only argument that I heard was that there were still ongoing conversations and the possibility of still getting additional hostages out. That there was still some hope that the operation could bear fruit in that respect.

Mr. ELLIFF. Was there any discussion or any information you had about how to resolve the financial problems of the complaining investors?

Mr. GATES. No.

Mr. MCMAHON. I only have one more question and that has to do with the expenditure of funds, and illegalities.

What is your view, from you knowledge, of the responsibilities for reporting illegal activities to the Congress? Is that an absolute requirement?

Mr. GATES. I would say that, if we had what we regarded as persuasive evidence of an illegality, our first responsibility is to report it to the Department of Justice. In consultation with the General Counsel and depending on what the rules of law, and so forth, are, my own instinct would be that such illegality should be reported to the Congress.

Mr. MCMAHON. Can you give an example of when an illegality would be considered to be exempt from reporting under the Intelligence Oversight Act?

Mr. GATES. Presumably, we are speaking of an illegality by somebody involved in the intelligence business.

Mr. MCMAHON. "Illegality" as defined in the law, which is "unauthorized expenditure of funds."

Mr. GATES. I can't come up with a hypothetical example. No.

Mr. MCMAHON. But you believe there could be an example where there would be a dispensation under the law from reporting such illegalities?

Mr. GATES. I just don't know the answer to that. I would go in with the assumption that there would not be, but I would defer to the General Counsel, in whatever conversations might be going on with the Department of Justice to that respect.

Mr. MCMAHON. What about the responsibility to report to the Intelligence Oversight Board?

Mr. GATES. I believe that any illegality should be reported to that Board.

Mr. MCMAHON. Absolute?

Mr. GATES. Again with the same caveat. That would be my instinct, but I just don't know the details of legal procedure well enough, and I would have to defer to the guidance of the General Counsel on that.

Mr. McMahon. Presuming the General Counsel had determined it was, in fact, an illegality is what the case is.

Mr. GATES. Again, if—let me state it hypothetically. If the General Counsel had determined it to be an illegality and if there were no considerations of prosecution and the Department of Justice did not interpose some legal objection because of prosecution that the General Counsel brought, yes, I would think it would be absolute.

But, you know, again my lack of knowledge of legal procedure is why I would have to look to the General Counsel. My instinct is the answer to the question is it would be reported to the IOB, but I don't want to make an absolute, that there would never be an exception. I just don't—I don't know legal procedure that well. I would have to defer to the General Counsel.

Mr. MCMAHON. But it would have to be deferred to the General Counsel?

Mr. GATES. Do you mean——

Mr. MCMAHON. Someone other than the General Counsel could not decide independently that it was exempt from reporting?

Mr. GATES. Not in my view. Not in my view.

Mr. MCMAHON. Senator?

Senator EAGLETON. I have a few questions. Bill, you go ahead.

Senator ROTH. No, I haven't many. Go ahead.

Senator EAGLETON. Counsel, interrupt me if you have pursued this line of questioning because time is too precious. Have you pursued the Secord line?

Mr. MCMAHON. Generally, but I know you have some specific ones.

Senator EAGLETON. Do you know General Secord?

Mr. GATES. I may have met General Secord before he retired in the course of interagency meetings, but I have had no other contact with him and I do not feel that I know him. I may have made his acquaintance once.

Senator EAGLETON. Before he retired, possibly?

Mr. GATES. Before he retired.

Senator EAGLETON. When did you first hear of General Secord being connected with any of the matters that are here before us? And from whom?

Mr. GATES. I can't place it exactly, but I would say a number of months ago one of the number of rumors that we heard in terms of funding for the contras was that he was involved with the private benefactors in some way, and it was no more specific than that.

Senator EAGLETON. You got it as a matter of rumor?

Mr. GATES. That is right, sir.

Senator EAGLETON. Can you remember from whom you received the rumor?

Mr. GATES. No.

Senator EAGLETON. Did you get further rumors? I mean, did you just hear that one rumor?

Mr. GATES. About Secord?

Senator EAGLETON. Yes. I am focusing on Secord.

Mr. GATES. That was pretty much it. Yes.

Senator EAGLETON. One time?

Mr. GATES. Yes, as far as I can recall. Somebody just mentioning at one point that——

Senator EAGLETON. What went through your mind when you heard the rumor that Secord might be involved?

Mr. GATES. The only thing that went through my mind was that I thought he had had some dealings in the past that were not entirely——

Senator EAGLETON. Not entirely secret?

Mr. GATES. That is probably as good a word as any.

Senator EAGLETON. Had you ever read anything about Secord? Read any book about him?

Mr. GATES. No. But I had heard that he had had some connection in a very negative way with the Wilson Terpil business.

Senator EAGLETON. There are two books out on that subject matter in which he is prominently mentioned. Had you read either of those books?

Mr. GATES. No, sir.

Senator EAGLETON. Didn't the Agency at times during the Wilson matter do some poking around internally to see where Wilson fit within the Agency during the time of the Wilson escapades?

Mr. GATES. Secord?

Senator EAGLETON. No. Wilson. I am digressing a little. When the Wilson thing blew, didn't the Agency do some internal looking to see what cracks, if any, were in the Agency with respect to Wilson?

Mr. GATES. To Wilson? Yes, sir.

Senator EAGLETON. Extensive?

Mr. GATES. That is my understanding. I had no direct involvement or knowledge of the Wilson investigation.

Senator EAGLETON. Who headed that up?

Mr. GATES. I think it was undertaken by the Inspector General.

Senator EAGLETON. While that investigation was going on and Wilson was gaining greater notoriety in the public press, didn't you hear, internally, from people about Secord?

Mr. GATES. No. Frankly, the associations that I had—let me ask a question, just to refresh my memory.

Senator EAGLETON. Sure.

Mr. GATES. Was the Wilson thing primarily during the late 1970s, the investigations?

I spent most of that time on assignment to the National Security Council staff, and so I really sort of missed out on even the internal hall gossip relating to the investigation.

Senator EAGLETON. Well, some of it was in the late 1970s. But when was he apprehended and [deleted] enticed back?

Mr. MCMAHON. 1983.

Senator EAGLETON. That was more contemporaneous.

Mr. GATES. But I think that in terms of kind of hall talk in the Agency and so forth that that pretty much was considerably after—had gone considerably before.

Senator EAGLETON. Well, to be specific, do you remember Clair George coming to you to talk to you about Secord?

Mr. GATES. No, sir, I don't.

Senator EAGLETON. Don't you remember Clair George coming to see you and saying that he was very much concerned about Secord being involved in this Iran business?

Mr. GATES. I don't remember that specifically. I do remember sort of generally that there were several of us who were concerned about Secord's involvement in just a general sense because of his prior associations.

Senator EAGLETON. Who were the several that were concerned? Yourself?

Mr. GATES. Clair George.

Senator EAGLETON. Clair George.

Mr. GATES. McMahon.

Senator EAGLETON. McMahon.

Mr. GATES. Probably Charles Allen. Pretty much the group inside that I had contact with on the Iran operation.

Senator EAGLETON. So those folks, including yourself, were concerned that Secord was involved in this?

Mr. GATES. Well, we just thought that having him associated with it was not particularly smart.

Senator EAGLETON. And so to know that George was concerned, McMahon was concerned, Allen was concerned, did you talk to them? Or did they talk to you?

Mr. GATES. I think these views were shared. I don't remember any thing specific.

Senator EAGLETON. Don't you remember that Clair George in addition to telling you he was very concerned about Secord being involved in this that he, Clair George, had read some very negative things about Secord; that he heard some very negative things about Secord; and that he also knew that Secord had a connection with Wilson?

Mr. GATES. He may well have told me those things in the context that I just described, but I don't remember the specific conversation.

Senator EAGLETON. Do you remember him telling you——

Mr. GATES. I have no reason to doubt that it took place.

Senator EAGLETON. You have no reason to doubt that it took place. Do you remember him telling you that he was sufficiently concerned about this Secord connection that he wanted to make sure that other people in the Agency knew about it specifically—John McMahon and Bill Casey?

Mr. GATES. I don't remember that specifically. Again, I just don't remember. He could well have said that.

Senator EAGLETON. You were concerned about Secord being involved, George was, McMahon was, Allen was. You were the number two man in the Agency after McMahon retired in March.

Mr. GATES. Well, really from—toward the end of April on.

Senator EAGLETON. If you were concerned—you're the number two man in the Agency—don't you do something about that concern?

Mr. GATES. Senator, this operation had been underway at that point for almost four months. The concerns that anybody one would assume had already been conveyed to the White House and the decision had been made to go forward regardless of those concerns.

Senator EAGLETON. Well, it's one thing to initiate, it's another thing to have it go through for months. But, increasing concerns about the Secord connection—things that start can stop. Things that aren't going right can be stopped before they go even more wrong. Can they not?

Mr. GATES. I don't have the impression of increasing concern. There was an underlying concern throughout about the nature of some of the individuals that were involved in the enterprise.

Senator EAGLETON. Who else were they concerned about besides Secord?

Mr. GATES. I think people—I think that some of those in the clandestine service were concerned about this Iranian fellow, Ghorbanifar.

Senator EAGLETON. Did you hear about an individual named Hakim?

Mr. GATES. I heard the name, and I was told by—I have the general impression that people regarded him as a fairly unsavory character also, but I don't remember who told me that.

Senator EAGLETON. Didn't you sit back in your chair one day—a career man and a very, very good one; an extraordinarily bright individual—you knew this thing was going on—a very significant operation—unique in its configuration—and you said, well, there's Ghorbanifar—he's been described as everything from being an outright perjurer, a "slime ball", a "Most untrustworthy man". I wouldn't trust him from here to the door.

Then Hakim has been negatively described and, indeed, he became so worrisome that they yanked him out of action as the translator. Were you aware of that?

Mr. GATES. No, I did not know that.

Senator EAGLETON. You didn't know that?

Mr. GATES. No, Sir.

Senator EAGLETON. And they took Hakim out of the ballgame and put George Cave, who is fluent in Farsi. Then there was Secord, about whom you heard some things that were not completely savory. Didn't you stare out the window there and say my God, who are these actors that we're involved with in this delicate, potentially explosive undertaking? Didn't these names flash across your mind and didn't you say, we're in with some real characters here?

Mr. GATES. Yes, Sir.

Senator EAGLETON. Just tell me—do a little soul searching.

Mr. GATES. Well, the one—I would say that the most explicit conversations of these individuals that I recall concerned Ghorbanifar. And everybody was agreed the guy was a liar—flunked the polygraph test—a repeated polygraph test, and as somebody who was unreliable. And there was a good deal of discussion that if you

know the kind of guy that you're dealing with, if you know that you're dealing with a liar and a sleeze, and in the intelligence world you do run across more than one of those, and particularly in the international arms arena. As long as you know what you're dealing with then one could proceed to realizing that the whole operation was a gamble, a high risk operation, that concerns had been made known at the highest level about the operation as a whole—at least that's my understanding that Mr. McMahon on the 7th of December said that he thought that the whole thing was a bad idea, and the decision be made to go forward, certainly you knew you were in a high risk operation, that you were dealing with some very unpleasant people. But, the decisions had been made and the operation was underway.

Senator EAGLETON. Has the counsel inquired into Mr. Gates' knowledge when he first learned of the Allen memos?

Mr. ELLIFF. He hasn't seen the memos. We haven't seen the memos.

Mr. MCMAHON. He's testified the only memo he's aware of is the 14 October memo—that he has not seen any other memos which relates to the decision.

Senator EAGLETON. Mr. Gates, did you see this memo from Casey to Poindexter—where's the date on it?

Mr. FINN. It's undated and unsigned. You may wish to confirm that that was actually delivered.

Mr. GATES. I think I saw this document for the first time yesterday.

Senator EAGLETON. Saw that for the first time yesterday. Was that memo delivered to Admiral Poindexter?

Mr. GATES. I don't know. I was told this morning that it may not have been. That it was prepared by Mr. Allen, but that it may not have been delivered. And the answer is—the facts are I don't know.

Senator EAGLETON. It may have been prepared by Allen but it has Casey's typewritten name on it.

Mr. GATES. Oh, yes, Sir.

Senator EAGLETON. And no signature and no date. Who did you talk with today about whether it had or had not been delivered? Allen or who?

Mr. GATES. I think it may have been the General Counsel.

Senator EAGLETON. Do you know a Mr. Roy Furmark?

Mr. GATES. No, Sir, I don't.

Senator EAGLETON. Do you know of the name?

Mr. GATES. Yes, Sir.

Senator EAGLETON. What do you know of him?

Mr. GATES. The first time I heard of Furmark was after his telephone call to the Director of the 7th of November.

Senator EAGLETON. We've already got that on the record?

Mr. GATES. October 7th.

Senator EAGLETON. Did you ever talk to Director Casey about Mr. Furmark?

Mr. GATES. Only to the extent that the Director gave me the gist of the information that Mr. Furmark had given him.

Senator EAGLETON. Furmark calls Casey. How would Furmark have Casey's number?

Mr. GATES. I think—I don't know, but I think that Furmark and Casey are old friends from New York.

Senator EAGLETON. Did you hear Casey tell you at any time that he knew Furmark?

Mr. GATES. Not before then that I can recall.

Senator EAGLETON. How about after then?

Mr. GATES. Yeah, I think he made the reference to the fact that he had known him some time.

Senator EAGLETON. Did he use the words "old friend?"

Mr. GATES. No, I think it was more in the context that he had known him for some time.

Senator EAGLETON. A curious thing about this memo. It's for Poindexter and the subject is Roy Furmark's comments, and all throughout the memo Mr. Furmark is referred to as Roy. Every other person in this memo is referred to by their last name. I haven't counted them up, but it must be a dozen or two dozen times that Roy said this, Roy said that, Roy is uncertain whether he discussed, Roy said prior to the next deal. Roy said that Ghorbanifar told him, Roy even suggested a solution in paragraph 7. Roy suggested a solution to the problem is to let Ghorbanifar handle the shipment of the remainder of the HAWK spare parts. Sincerely, William J. Casey writing to Admiral Poindexter. When the CIA sends memos to the White House, are they on a first name basis usually?

Mr. GATES. It varies. Sometimes they are.

Senator EAGLETON. Well, if somebody's on a first name basis, then that's a sign of knowledge and/or friendship with the person, Roy.

Mr. GATES. Well, normally that's the case, but as I say. I think—it may be that Casey didn't even write that memo and people do sometimes use, when drafting correspondence for him, first names of individuals if they believe that he knows them.

Senator EAGLETON. This is more than just an individual. It's not like a greeting card or birthday card or a dinner invitation or something innocuous. This is a tightly held, deeply secret situation in which Roy Furmark plays a significant role and is constantly referred to as Roy. How well did Poindexter know Roy Furmark?

Mr. GATES. I have no idea.

Senator EAGLETON. Because if you're writing to someone who doesn't know someone on a first name basis, how do you—normally you'd write the memo in the last name to the recipient. Casey writes it—or someone for him writes it on a first name basis. It's interesting. Does that interest you at all?

Mr. GATES. No.

Senator EAGLETON. Because in the memo is the dynamite paragraph—somebody in this room called it dynamite—Ghorbanifar told Roy and Khashoggi that he believe the bulk of the original $15 million price tag was earmarked for Central America. In this regard, Ghorbanifar told Roy that he was relieved when the $100 million aid to the contras was passed by the Congress. That's dynamite. Right?

Mr. GATES. Yes.

Senator EAGLETON. And Casey appears to be writing this because all these Roy's are in this. Now when Allen writes a memo to the Director on these same subjects, he calls Furmark Furmark. First he identifies him as Roy M. Furmark as his middle initial, and then the rest of the memo refers to Furmark.

He's not on a first name basis with Furmark because he just calls him Furmark. Casey, according to a memo, appears to be on a first name basis with him. And, indeed, he's on a good enough basis with him that Roy calls him on the phone. How would Roy get Casey's phone number?

Mr. GATES. I think that the Director's telephone number—the office phone number for the Director is, if not in the national journal annual summary of executive phone numbers, the Agency's operator is and could call the Director's office.

Senator EAGLETON. So he puts in the call and says, I'd like to speak to Director Casey. Then what happens to a call?

Mr. GATES. If it's to the Agency operator they refer the call to the Director's office.

Senator EAGLETON. All right. There are several secretaries there and he says, this is Roy Furmark in New York, I'd like to talk to Director Casey and Casey took the call.

Mr. GATES. I don't know whether he took the call or whether the secretary said—I mean, knowing the way Casey's schedule operates, the secretary probably said he's not available right now or he's out of the building or he's in a meeting or something else. And when she showed the Director his list of phone calls that had come in, presumably he recognized it and returned the call. I just don't know the specific circumstances.

Senator EAGLETON. So he either took it as it came right in or he came back to his desk and got pink message slips. The people he didn't know he farmed out to staff people. The people he knew—on a first name basis—he returned those calls. So on the pink slip, the secretary said Roy Furmark called from New York. Then Casey returned the call. That's a possible scenario?

Mr. GATES. Yes, Sir.

Senator EAGLETON. He doesn't return every call that comes into the Director's office. I mean, he must get dozens a day. He must get more than I do.

Mr. GATES. He gets a lot of calls. He also makes a lot of calls or returns a lot of calls. He has—I will tell you one thing just since we're pursuing this line of questioning—I have never in my life—I've worked for people like Brezinski and others—and I have never in my life known any single individual who has as wide an array of acquaintances all across the country to whom he speaks occasionally as Casey does.

Senator EAGLETON. Including Roy Furmark.

Mr. GATES. Presumably.

Senator EAGLETON. Did Allen ever talk to you about his conversations with Furmark?

Mr. GATES. I don't honestly recall. The only conversation about Furmark with me that I specifically remember is the Director mentioning that he had called. I don't recall Allen talking to him. He may have.

Senator EAGLETON. Were you at any point in time made aware of Allen's memos to Casey?

Mr. GATES. Well, I certainly was aware of the one of the 14th.

Mr. HALL. That's the "non-Contra" memo.

Senator EAGLETON. That's the non-Contra memo. You were made aware of a memo on the 14th. How about one dated the 17th of October?

Mr. GATES. I don't think I've ever seen this memorandum. It was written on the day that I left for overseas for two weeks.

Mr. MCMAHON. This was after the meeting at the White House on the 15th, Senator, in which the Director advised Poindexter that they should have the General Counsel look into this issue.

Senator EAGLETON. Okay. And did you know anything about that?

Mr. GATES. About the meeting of the 15th?

Senator EAGLETON. Yes.

Mr. GATES. I was a participant.

Senator EAGLETON. You were a participant in that. Did Roy Furmark's name come up in that meeting?

Mr. GATES. It probably did. I don't remember specifically but in the context of the threat to the operational security as outlined by Allen in his memorandum that was handed over, my impression from Mr. Casey is that he had mentioned to Poindexter on at least one occasion—and I don't know the specifics about Furmark's call and the concerns that it raised.

Senator EAGLETON. It wasn't one of the key parts of the meeting of the 15th? Furmark and what Furmark knew and was threatening to say.

Mr. GATES. I don't recall that we really got into any details about specific individuals—I mean, specific transactions or some of the detail in Allen's memo, for example, of the 14th in that meeting with Poindexter. It was a broader—as I recall—that it was a broader meeting that addressed the overall—briefly what was in Allen's memo, the fact that the Director had heard, he probably raised the Furmark business, and the overall operational security was endangered, and the one thing I remember the meeting focused on was our telling Poindexter that it looked to us like it was very necessary for them to pull their story together and make it public because it didn't look to us like the operational security could be preserved very much longer. And it was at that level of sort of strategy if you will that it was discussed.

Senator EAGLETON. Would't it be fair to say that the spark that triggered the meeting on the 15th was Furmark? That that's what really brought it to head to your mind that this thing was about to blow?

Mr. GATES. Not in my judgment. In my judgment it was Allen's memorandum.

Senator EAGLETON. Well.

Mr. GATES. Allen's memorandum of the 14th because as I——

Senator EAGLETON. Did he make reference on the 14th to Furmark?

Mr. GATES. Not in his memorandum, no. I don't believe so. When I got Allen's memo on the 14th I immediately or quickly took it to Casey and told him what I thought—and he looked at it, and I told him I thought we ought to get it Poindexter as quickly as possible. He immediately tried to make an appointment with Poindexter. Poindexter was unavailable on the 14th and we met with him just prior to his own staff meeting on the 15th. The meeting on the 15th was not a particularly long one. He, in effect, squeezed us into his schedule and he came to Casey's old EOB office before going on to his own staff meeting, as I recall it.

Senator EAGLETON. The 14th of October memo of Allen—the one that you got——

Mr. GATES. Yes, Sir.

Senator EAGLETON. Says on page 6, the government of the United States along with the government of Israel acquired substantial profit from these transactions, some of which profit was redistributed to other projects of the U.S. and of Israel.

Mr. GATES. Yes, Sir.

Senator EAGLETON. That caught your attention?

Mr. GATES. Yes, Sir.

Senator EAGLETON. Now, some of that information that caused Allen to put that paragraph in the memo came from Furmark. Correct?

Mr. GATES. My impression was that it was primarily from Allen's reading of the intelligence and him seeing the involvement, putting together through intelligence the involvement of Secord in the Iranian venture, and knowing that Secord probably also was involved in the Contra activity, that it was the putting of these two things together analytically and reading between the lines in the intelligence. That was my impression of what prompted Allen to write the memo.

Senator EAGLETON. You had known, and everybody else in the Agency at a high level knew, that Secord was involved in the Contra thing. That was no news to——

Mr. GATES. I think the added piece was the information about the problems—the financial problems—or problems in the financial transactions associated with it and I—I'm putting words in Allen's mouth. I don't know precisely what prompted him to write the memo, but that's my impression from what he has said to me.

Senator EAGLETON. It's no mystery to anybody that Secord was heavily involved with Contras, that Secord was heavily involved in Iran. That was no secret to you, was it?

Mr. GATES. No. sir.

Senator EAGLETON. OK. It was no secret to Allen; it was no secret to——

Mr. GATES. But I think it was that——

Senator EAGLETON. Casey. It was no secret to anybody.

Mr. GATES. It was that fact put together with what Allen had been getting out of the intelligence in the preceding weeks. I think, that had raised his concern and led to his analytical judgment that there might——

Senator EAGLETON. The meeting at the White House was short because Poindexter squeezed you in the schedule.

Mr. GATES. Twenty minutes. Thirty minutes.

Senator EAGLETON. Twenty minutes or so. Do you think the name Furmark was mentioned?

Mr. GATES. I don't remember specifically but it easily could have been.

Senator EAGLETON. Who do you think mentioned it?

Mr. GATES. Probably Casey.

Senator EAGLETON. Back to that point in time, weren't you curious about Furmark, at a time when this whole think was about to blow and you're advising the White House to go public?

Mr. GATES. Only to the extent that the information that Casey had gotten from Furmark further supported, or was the other piece of information that we had that tended to corroborate Allen's analytical judgment. So I gave it importance in that perspective.

Senator EAGLETON. Has Casey ever mentioned Furmark to you since the October meeting?

Mr. GATES. I'm sure he has at one time or another, but——

Senator EAGLETON. What did he say?

Mr. GATES. I think it was in the context—it must have been in the context of this information about the financial problems associated with this affair—the Iranian business.

Senator EAGLETON. Did he mention it to you more than once since that meeting in the White House?

Mr. GATES. Probably.

Senator EAGLETON. Three times?

Mr. GATES. I don't really know. Maybe half a dozen.

Senator EAGLETON. Certainly times.

Mr. GATES. I think that is fair.

Senator EAGLETON. Do you have anything more?

Mr. MCMAHON. We'll just go with the sequence of records. On the 1st of October, Allen comes to Mr. Gates and tells him that there are dollars that are going somewhere from the —that he's suspicious. On the 7th of October there is a telephone call from Furmark to Casey.

Mr. GATES. You know, I think it is important to recall the context in which Allen mentioned the possibility of profits being used. He is not making that allegation directly. He says that if Ghorbanifar goes public these are the kind of things he might say.

Mr. MCMAHON. I thought his analysis showed that there was money that was missing.

Mr. GATES. His analysis shows a lot of financial problems but the specific paragraph in which the only reference to diversion—to the possible diversion of funds occurs states that these are the kinds of things Ghorbanifar might say if he goes public. And then I recall there are four or five ticks, and this one is the last one.

Mr. MCMAHON. I'm sorry, I thought the 1 October was the verbal brief that he came to you and just talked to you.

Mr. GATES. I am sorry; I am sorry, you are right. My mistake.

Mr. MCMAHON. That he is concerned because of intercepts and his analysis that there are dollars going somewhere, whatever you just said.

Mr. GATES. The primary focus of his briefing, as with a later memorandum, was on the problems with the two different channels of contact with the Iranians, the fact that the first channel was left high and dry financially or that there were still unresolved financial problems relating to the first channel, and that it was that un-

resolved problem that could lead to exposure of the whole operation because the people involved were so unhappy.

It was only after describing all of that that he mentioned it also looked to him like it was possible there were some diversions.

Mr. McMAHON. And then on the 7th of October Furmark calls. The 9th of October there's a lunch—Casey, Gates, and Ollie North.

Mr. GATES. October 7, if you'll forgive me, is also when Allen and I briefed the Director and Allen gave the Director the same briefing he gave me on the 1st.

Mr. McMAHON. So Allen and Mr. Gates met with the Director on the same day he gets a call from Furmark; October 9, they have lunch—Mr. Casey, Mr. Gates, Mr. North. And North mentions that there are dollars in Swiss account and something is going to Contras—a cryptic remark.

Mr. GATES. And very confusing. I remember going back to Casey after lunch and saying, "Could you make heads or tails what the hell he was talking about?" And we couldn't.

Mr. McMAHON. October 14, is the first Gates memo describing what he's just said. October 15, they have a White House meeting at which this is all discussed. October 21, there is a second phone call from Furmark.

Mr. GATES. Excuse me. The 14 memo was an Allen memo, not a Gates memo.

Mr. McMAHON. Allen memo to Gates; I'm sorry.

Mr. GATES. Allen to the DCI.

Mr. McMAHON. Allen to the DCI.

Continuing, October 21, second call from Furmark. October 22, Allen and Cave go to see Furmark. October 23, second memo from Allen to Mr. Casey, which describes that meeting. And there's a memo written from Mr. Casey to Poindexter. November 6, we have another meeting in the White House with Mr. Casey on the subject. So those are the sequences of events as I understand it.

Mr. GATES. And to the best of my recollection the 6 November meeting is the one in which I participated in which Casey said to Poindexter that he should have the White House counsel look at the thing.

Senator EAGLETON. We're coming to an end. Do you want to question Mr. Gates?

Mr. GATES. That was the point at which Mr. Poindexter said, "I don't trust Wallis-ton to keep this quiet."

Mr. McMAHON. And at some point in there Mr. Casey inferred that he had advised Poindexter that——

Mr. GATES. I have the impression from Casey that he had earlier told Poindexter, presumably while I was overseas that he ought to have the White House counsel look over the whole thing.

Mr. ELLIFF. And with respect to Colonel North?

Mr. GATES. I think he told me that maybe North ought to get a lawyer.

Senator EAGLETON. Do you have anything?

Senator COHEN. I have nothing.

Mr. ELLIFF. I have one question.

Mr. Gates, when you asked the Agency General Counsel to review this matter, did you ask him or do you know if he did review the Allen analysis and any intellgence in connection therewith that supported it?

Mr. GATES. I don't know what he looked at. I left town 2 days after I told him to look it over and see if there were any problems with the Agency.

Mr. McMAHON. One last question. Was there ever an Agency investigation of any of these activities which we have discussed today? Any intent to convene an investigation?

Mr. GATES. There is an investigation, what we call a fact-finding investigation.

Mr. McMAHON. No, no, I mean an official, not just gathering documents, an Inspector General investigation.

Mr. GATES. In terms of propriety and so forth?

Mr. McMAHON. Right.

Mr. GATES. No, what is going on now is essentially a fact-gathering undertaking.

Mr. FINN. So there——

Senator COHEN. With your permission, I would like to enter a comment.

One of this morning's witnesses, Daniel Childs, the CIA Comptroller, called at 2:15 this afternoon to inform the Committee that the information requested by Senator Eagleton during his cross-examination of Mr. Child's, with respect to that, Director Casey has agreed to obtain that information, and in fact a request has already been made to a Swiss banking institution to obtain the identity of the individuals who deposited the funds into the account in question.

Senator EAGLETON. Thank you very much.

Continuing, Mr. Gates, thank you for your testimony that you provided today. You are requested to remain available for further proceedings at the call of the Chair. You also will remain under oath in the event that further procedures requiring your attendance will be necessary.

Finally, the Committee admonishes you not to discuss your testimony here today with any other person involved in the matter under investigation in this hearing, or indeed, any other individual in the world.

Do you understand this admonition?

Mr. GATES. Senator, with all due respect, with respect to the last requirement, we still are conducting a fact-finding undertaking at the Agency. There are still questions about which I wish to know further information. I assume that it is satisfactory that I can ask any questions I wish, as long as I do not describe what I said in my testimony.

Senator EAGLETON. Do not discuss your testimony with anybody else. You have your duties to discharge in your investigating.

Mr. GATES. Thank you, sir.

[Whereupon, at 5 p.m., the hearing was adjourned.]

DECEMBER 9, 1986.

Hon. DAVE DURENBERGER,
Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Inasmuch as I had less than 24 hours to prepare for my testimony and was not a direct participant in the events described, I now find that I was inadequately informed at the time of my testimony about the Furmark-Casey contacts. In helping to prepare Mr. Casey's testimony for this week, I have learned that Mr. Furmark spoke to the DCI on 7 October, he made no mention of the possibility of any Iranian funds going to the Contras. He spoke only of dissatisfied investors, the possibility that the investors had been speaking to U.S. Senators, and a suggestion on how to resolve the issue. This is summarized in a DCI memorandum of 8 October. (C)

It was on 22 October, in discussion with Mr. Charles Allen in New York, that Mr. Furmark said for the first time that Ghobanifar—the Iranian intemediary and arms merchant—had told him that he (Ghobanifar) believed that some of the money had been "earmarked for Central America." The Committee has the unsigned, undated memorandum detailing this conversation of 22 October between Allen, Cave and Furmark. (C)

I hope this clarification is useful to the Committee. (U).

ROBERT M. GATES.

Chairman BOREN. In that record, in that transcript, I believe in response to questions from Senator Cohen, you've recounted much of the very same information that you recounted today about the October 1st information that was given to you by Mr. Allen. We've had discussion, Senator Nunn and others, again going back to this point, and I think Senator Cohen has outlined very well the concerns of the committee. I know it is a concern, which you share, that you have an obligation to point out any possible illegal or improper activity. I notice again in response to question 8, which we gave you in writing, when you were asked to talk about any activities that you have reason to believe were unlawful or contrary to the Executive Order, which had not been reported to the Intelligence Oversight Board, or activities that involve a violation of law, you said, I am not aware of any activities conducted by the CIA, which I have reason to believe were unlawful. Again, I gather from your later answers that you were simply focusing in your response on your own responsibilities at the agency. But you were not again limiting your obligation to report only illegal activities or activities which are improper to the CIA, is that correct?

Mr. GATES. That is correct.

Chairman BOREN. You said that you have learned from the experiences of the last 3 or 4 months. I want to commend you for your candor in answering the questions today. I think you've been very

open in your responses. It's very easy for any of us to sit back and second guess decisions that were made at the time, and I understand that while we're focusing in this line of questions on the Iranian arms sales and the diversion of funds, there were many, many other things which took on the nature of crises at the time that were going on. So it's always much easier to judge actions in retrospect when you're isolating only one policy area without putting it in the context of everything else that you were doing at the time.

Let me just ask this question. Going back to what you were told by Mr. Allen on the first of October, the suspicions that were raised at that time about the diversion of funds, information coming about the complaints about overcharging, and payments that were out of line. Looking back at that, when you consider, as Senator Nunn asked you earlier, probably the Attorney General didn't have much more to go on in terms of initial suspicions, in terms of facts, than you had to go on during this same period of time, and yet he proceeded to launch an investigation into the matter. If you had it to do all over again, do you think that you should have reported at least your suspicions, that there might have been a diversion of funds, based upon what Mr. Allen had told you and other information available to you during October, do you think you should have reported to the Attorney General or that you should have reported it to the Intelligence Oversight Board? And that in retrospect you may have made an error in that regard?

Mr. GATES. Well sir, I think that it's difficult to look back with 5 months hindsight and not acknowledge that some things might have been done differently or better. I think in light of this experience of the last few months and all that has flowed from it, I certainly do wish that I had launched a more intensive investigation at that time.

Chairman BOREN. To paraphrase it, you feel it would have been better if you had been more aggressive in pursuing and investigating the matters that you did know about with the possibility of reporting it if you found out additional information.

Mr. GATES. Yes, sir.

Chairman BOREN. In retrospect, do you feel that it was appropriate to use transfer of arms as the means for either opening a relationship with a moderate faction in Iran or to factions in Iran that could establish a more constructive relationship with us in the future, or to obtain the release of the hostages either one? As a policy matter do you think it's wise to use arms as the means of the currency of obtaining either one of those two policy objectives?

Mr. GATES. No, sir, I don't think so.

Chairman BOREN. You were not consulted in advance of the issuance of the finding in January in regard to the Iranian arms sales?

Mr. GATES. No, sir.

Chairman BOREN. Let me ask you, in answer to another one of our questions about your background and experience, you indicated that you sat as a member of the three-person CIA panel which reviews covert operations. You talked favorably about this kind of institution, the fact that there does exist an institution within the agency which reviews covert operations. Did this institution play

any role in the review of or oversight over the Iranian arms transfer?

Mr. GATES. No, sir. In fact, if I were to—beyond the substantive issues we've been talking about, if I were to point to one factor that played a role in many of the aspects of this operation going awry, it would be in the fact that the regular procedures for the development and implementation of covert action both inside CIA and within the Executive Branch as a whole were essentially ignored.

Chairman BOREN. Including the way in which Findings are usually issued in terms of the persons in government who are usually consulted—the full range of persons usually consulted in advance of the issuance of a Finding were obviously not consulted fully in this one.

Mr. GATES. I think it is perhaps worth noting just how intensive the management of or extensive the management and auditing of covert actions are because of the impression that they are run out of someone's hip pocket. First of all, when a Finding is prepared it receives an extensive internal coordination within the Directorate of Operations itself including with the attorneys assigned in that Directorate. There is then an extensive coordination within the Agency itself with the General Counsel and a variety of other offices including the Deputy Director for Intelligence for substantive input—is this a smart thing to do, are the vulnerabilities as described and so forth. There is then a regular interagency process of coordination that takes place that involves officials from National Security Council staff, the Department of State, the Department of Defense, and our Agency——

Chairman BOREN. Joint Chiefs of Staff?

Mr. GATES. A representative from the Joint Chiefs of Staff is present. Third, there is the informing of the intelligence oversight Committees and briefing of the Findings and what is contemplated under those. There is the whole structure of internal management and accountability. There is the internal covert action review group inside the agency. These Committees are briefed periodically. This Committee gets a briefing every two weeks on one program of particular interest to it. There is a periodic review by the National Security Council at the principals' level—not the staff—by the principals, the President, Secretary of State, the Secretary of Defense, of all covert action activities. And in addition to that there is a staff that works in the Directorate of Operations that is essentially a compliance staff that reviews all the daily cables that go in and out, that relate to any of these activities to ensure compliance. So there is a very intensive and extensive set of procedures and bodies organized to ensure that these activities are carried out both effectively and within the rules and one of the tragedies of this entire affair is that almost every single one of those safeguards was essentially ignored.

Chairman BOREN. I think your statement is an excellent one, and I think it's very valuable to have that statement put on the record. Because, what we have here is really principally a violation of the very internal procedures and safeguards that have been set up within the Executive Branch of government and they simply were not followed in this case. Is that correct?

Mr. GATES. And I think that's one of the most important lessons learned both by the Executive Branch and the CIA.

Chairman BOREN. In your opinion, is the fact that this became largely a National Security Council Operation as opposed to a CIA operation, is that the probable reason or at least a part of the reason why normal procedures were not followed?

Mr. GATES. I think it had to do with the origins of the project, the involvement of another country and the evolution of the project itself, being run or managed out of the National Security Council that contributed to it.

Chairman BOREN. I noticed in reading your speeches and articles that you've expressed concern in the past that Presidents don't always get the right kinds of intelligence data, or the kinds of intelligence data they need to make the right decisions at the right time. The data from the CIA, for example, is filtered by the National Security Council, the National Security Advisor and others on its way to the President very often except for the direct communication between the Director and the President. Is that a fair statement of your views that you do have such a concern? If you do, what do you think can be done to improve the situation to make sure that the President gets the actual intelligence that he needs?

Mr. GATES. Well that appraisal was written reflecting on my experience in the three administrations in the 1970's. Frankly, this adminstration has been a good one in terms of receptivity to intelligence. The principals all get for the first time as far as I know, in the history of the Intelligence Community all of the principals of the National Security Council with a single exception of the President, have a CIA officer that calls on them every day and brings them directly, not just a copy of the President's daily briefing, so that they are aware of what the President is seeing, but also delivers into their hands, the national intelligence estimates, and such other documents as the senior managers at the CIA think they may find of interest. Once a week there is included in the President's daily brief, a sheet that includes all of the important intelligence assessments published during that week. The major intelligence monographs, and frequently the senior principals of the government will request several of those. So there is a great deal of direct communication of intelligence to the senior members—to the principals of the National Security Council: the Vice President, Secretary of State, the Secretary of Defense, Chairman of the Joint Chiefs of Staff, and the National Security Advisor. My understanding is that those materials that are provided to the National Security Advisor, are also shown to the President and he sees them as well. So it's been an Administration, frankly, in which there's been a good deal of receptivity to the finished intelligence product.

Chairman BOREN. I think Senator Cohen has a——

Senator COHEN. Just a couple of minor followup questions, Mr. Gates. You said something during the last round of questions about the need to develop bipartisan support for these policies. I guess what strikes me as being so ironic or even tragic in this particular case, you mention the word tragic, is that you'd be hard pressed to look at this Committee and find that you didn't have bipartisan support on virtually all of the programs requested by the Administration, even in Central America. The Chairman of the Committee

supports the Administration, Senator Bentsen supports the Administration, Senator Bradley is supporting the Administration. And I must say that you'd be hard pressed to find those areas where you haven't had bipartisan support.

What took place in this particular case, the system wasn't just bypassed, the system was amputated. Everything was cut off. Everything was cut off. Not because it was a question of not having bipartisan support on Capitol Hill, because you didn't even have support within the Administration. You had the two major figures of this Administration on foreign policy and defense policy fundamentally opposed. Secretary Shultz wrote an extensive or had an extensive memo prepared back in the summer of 1985, flatly opposed. Secretary Weinberger said too absurd to even comment on. You even had Bud McFarlane in December of 1985 saying that he had been to the meeting of Mr. Ghorbanifar and he came back disillusioned, saying I know that I recommended this program back in August, I changed my mind, it isn't worth pursuing, we ought to terminate this thing right now. So you've got McFarlane that says I'm opposed, Weinberger opposed, Shultz opposed, McMahon opposed. The program stayed alive. Why in your judgment did that program stay alive under those circumstances? What were the reasons for its continuation?

Mr. GATES. Well under those circumstances I think that the only answer that's possible is that the President made a decision. Those are his advisors but he is certainly not obligated to take their advice.

Senator COHEN. So in essence, it was the President that wanted the program to stay alive.

Mr. GATES. Well, I think it is apparent that with the opposition of the people that you mention that that would be the only circumstance.

Senator COHEN. The point was the reason the system was amputated was because there was a recognition within the Administration it didn't even have support or unanimity within its own ranks. That 2 of the top people, maybe 3 of the top people were fundamentally opposed to the program. So it was determined that when we had opposition, not on Capitol Hill—you might have gotten some good advice—not you but the Administration might have gotten some very good advice if you had some role in putting an end to some misconceived notions that have been generated in the Executive Branch from time to time. But the fact is that I think we might have been of beneficial help in this case by bringing this to our attention but the Administration knew it had problems. There was such distrust in the Administration of this program that they decided just to short circuit the entire system, don't let State know what's going on. If State knows about this it'll get out to the press. Don't let DOD know what's going on other than a few key people. Cut the CIA out with the exception of the Director and a few others. And eliminate Congress altogether. It seems to me it's not a question of having a lack of bipartisan support on Capitol Hill but having no support, or very little support within the Administration for a misconceived policy. Thank you.

Chairman BOREN. Thank you, Senator Cohen. Mr. Gates, there are several members of the Committee that have indicated to me

that they would like to have another round of questions, another opportunity to ask some additional questions in open session. And I know that you would be very disappointed to miss the opportunity to be invited back to be with us again tomorrow. So it would be my plan that the Committee would reconvene in the morning at 10:30 in the morning. I anticipate we will have perhaps 2 hours tomorrow in open session, at which time the other members can ask the questions they didn't have an opportunity to ask in their round of questions today, so we would appreciate your appearance here tomorrow at 10:30 and we will proceed with the open hearings.

I want to express my appreciation to you. This has been a test of physical endurance as I look at the clock as well as intellectual endurance. We have had you here now since 10 o'clock this morning. I know that it has been a very rigorous day, and I want to again express my appreciation to you for the candor with which you answered the questions. This is a position of tremendous responsibility in the government as you realize very well in your own long professional experience. I think that we're all well served by a very thorough and complete airing of all the issues that are before us during this confirmation process. I want to thank you again for your participation in it today and the openness with which you have responded to our questions.

The hearings will stand in recess until 10:30 a.m., tomorrow in this same room.

[Whereupon, at 5.13 p.m., the committee was recessed, to reconvene at 10:30 a.m., Wednesday, February 18, 1987.]

NOMINATION OF ROBERT M. GATES TO BE DIRECTOR OF CENTRAL INTELLIGENCE

WEDNESDAY, FEBRUARY 18, 1987

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to recess, at 10:40 a.m., in room SD-106, Dirksen Senate Office Building, Hon. David L. Boren, Chairman of the Committee, presiding.

Present: Senators Boren, Nunn, Bradley, DeConcini, Cohen, Roth, Hatch, Murkowski, Specter, Hecht and Warner.

Staff Present: Sven Holmes, Staff Director and Chief Counsel; James Dykstra, Minority Staff Director; and Kathleen McGhee, Chief Clerk.

Chairman BOREN. We'll proceed with the questioning, resuming the questioning from yesterday of Mr. Gates. And Mr. Gates, I would remind you that you are still under oath, proceeding under oath from the earlier testimony. We'll have another round of 10 minutes of questioning from those Senators who are present or who will be coming this morning to ask additional questions.

I would first like to begin with a general question to you, Mr. Gates, and that is your assessment of the strengths of our intelligence capabilities at this time, your assessment of the weaknesses as well, and relate that assessment to what your principal goals would be if you are confirmed as Director of the Central Intelligence Agency.

Mr. GATES. Mr. Chairman, I think that the principal strengths of American intelligence certainly lie in the areas of collection and analysis. I think that there is little question that across the board, our collection capabilities, both human and technical, are the finest in the world. Our analytical capability, particularly if you look across the entire community, I think has no counterpart anywhere in the world, either. The KGB, for example, does not even have an analytical element.

So, I would say that collection and analysis are our greatest strengths. I would have to say that as part and parcel of that I think that it almost goes without saying that the most important part of both of those is the caliber of people that we have. Our processing throughout the Intelligence Community for people, our selection process, is immensely rigorous. People are very dedicated. They have a great sense of integrity. They are objective. And they are committed to providing the finest intelligence available.

In terms of weakness, I would say in our weaknesses that one problem that we have is a problem that is paralleled with the problems the Department of Defense has, and that is our inability to maintain a steady level of resources over a prolonged period of time. We seem to go in fits and starts, with periods of large expenditure for a few years and then severe cutbacks and then back and forth. It seems to me that what both intelligence and Defense need is a healthy rate of growth—although perhaps not an enormous one—sustained over a long period of time. This is one of the great strengths that the Soviets have in both these areas, is being able to plan out 10 or 15 years. One of the problems we have at the current time is our inability under current budgetary circumstances to make some of the new investments required for the late 1990's, particularly in some of our collection areas.

I think some of the weaknesses we have had in the collection and analysis area are being addressed. I think we are giving much more attention to efforts to promote competitive analysis, to get differences of views in front of the policymakers so that they understand those differences and understand our uncertainties.

In the HUMINT world, in the human intelligence world, we still need to have more resources in that area, and I believe more officers overseas, and perhaps some additional incentives for those who serve under difficult circumstances overseas.

I would point to two other weaknesses or problems that we have. One is in the area of counterintelligence. It is apparent that in 1985 and 1986 that we had some serious problems in this area. A number of remedial measures have been taken by the community. The Department of Defense has cut those with clearances by 1½ million people. They have doubled the number of reinvestigations. There have been more spies arrested by the FBI in the last 3 years than in the last 18. The community has restructured its mechanisms for cooperation and collaboration on counterintelligence matters, and I think Judge Webster is giving very sound leadership in that arena.

Nevertheless, we still need to do more in terms of selection, in terms of applying the need to know, in terms of the problem of overclassification, in terms of reinvestigations and so on. So I think that is a problem area.

And the final one is the one that I mentioned yesterday, and it is both a problem and a weakness, and that is the problem of leaks. That in parallel with counterintelligence problems has led to a pretty steady exposure of our sensitive sources and methods, and this is a problem that I think the executive branch and the legislature are going to have to work on together to try and do something about.

Chairman BOREN. You mentioned the need to get more highly trained people, and I presume people with appropriate language skills and training into overseas assignments. In your opinion, are our traditional personnel policies sufficient to continue to attract and retain people, particularly those necessary for overseas assignment, or do you think that there need to be additional incentives, perhaps even additional legislative initiatives in that area?

Mr. GATES. Yes, sir, I think that more is needed to be done for us to be able to both recruit and retain the kind of talented people

that we need. We are nowhere near competitive with the private sector for people with technical skills, for example—scientists and engineers, geologists, and so on.

Similarly, the number of people, the pool of people from whom we can draw in terms of people who are qualified with languages, who are willing to go overseas—it has become much more dangerous to serve overseas—all of these are problems that we have. We are still able to recruit people, but not in the numbers that we would like and not with the skills that we would like. We have to do a lot of training, particularly on languages ourselves, once people join us.

So we are looking at a number of initiatives in order to make the intelligence service more attractive to people, particularly overseas duty, and we will be working with the Committee to present those to you in the coming months.

Chairman BOREN. Are there a significant number of persons with the agencies who are occupying administrative, policymaking roles, supervisory roles, over a geographical sector at headquarters, who have had very little actual time or experience in the regions, in the geographical regions or the countries over which they have general responsibility?

Mr. GATES. I would say that that is not generally the case in administrative or managerial functions, particularly within the clandestine service.

Chairman BOREN. What about analysis?

Mr. GATES. In analysis we have actually made significant gains over the last half dozen years in terms of hiring people with extensive background in regional studies and languages and so forth. I think we have made considerable progress in that regard.

Chairman BOREN. Do you have a significant number of analysts who are analyzing developments in countries with which they have had very little firsthand experience in terms of living in those countries or being in those?

Mr. GATES. We have a fair number of analysts who have not lived in countries overseas. But we have had a very aggressive program over the last several years of fostering travel and temporary duty for analysts in a wide range of overseas posts. We try to ensure that our analysts have an extended travel to the country that they are covering, at least once every year or two. We have some very good programs with the Department of State where our officers are able to go to Embassies and work through the summer for 3 or 4 months while State Department officers return for home leave. We have a fairly extensive Analyst Overseas Program in which analysts are allowed to take up residence in an Embassy for a year or two. So we have a number of programs in training that allow analysts to have some direct firsthand exposure to the area that they are supposed to be covering.

Chairman BOREN. I think that is very good, and I want to encourage you to continue to work on fully implementing that program, because I think the more information, firsthand experience that those who are providing analysis can have of the countries with which they are dealing, certainly is going to enhance the quality of their analytical reports, and also would certainly welcome your suggestions to this Committee of additional ways in which we

can attract and keep trained personnel, especially those in critical areas overseas.

Let me just ask one very brief question as a follow up to some of the matters which were raised yesterday. There has been an indication to me that Director Casey, before entering the hospital—2 or 3 weeks before entering the hospital—informed the leadership of the Committee that a member of the staff, an employee of the agency in Central America, had been disciplined for improper activities and that these activities involved cooperation with Colonel North on some projects that were deemed to be inappropriate under Agency policy.

As far as you know is this the same individual that you referred to yesterday in your testimony and the same individual about which you provided notice to this Committee and have continued to provide followup notice in terms of the process of that investigation, or is there another individual involved as well?

Mr. GATES. I believe it is the same individual. I will be sure to check that when I go back, but I am pretty sure it is the same individual.

Chairman BOREN. At this point in time you know of no other——

Mr. GATES. There is only one individual who has been brought to my attention as having a problem. But as I indicated yesterday, we do have a fairly extensive internal investigation going on in terms of compliance with the Boland Amendment.

Chairman BOREN. Right. If you would check your sources of information, it would appear to me it is likely to be the very same individual about which we had discussion yesterday, but if there is an additional individual case, I think the term used by the Director in informing the leadership at that time was that the individual had been disciplined. That is the only thing that raises a question of whether or not this was an earlier case. It appears to be the same, but if it is not the same, we would appreciate you making that known for the record at a later date.

Mr. GATES. I will.

Chairman BOREN. Senator Cohen.

Senator COHEN. Thank you, Mr. Chairman.

Mr. Gates, you just indicated that there were more spies arrested in the last couple of years than perhaps the last 18. Does that mean there are more spies in existence today, or simply more being arrested?

Mr. GATES. I think it is primarily a matter of a much more aggressive investigative process, a much more aggressive approach by the FBI, and the result of a decision some years ago to take such cases to the court rather than simply settle them by having the person sent back to the Soviet Union or wherever the spy came from. So I think it is a combination of there may be some more, but my guess would be that it is primarily a much more aggressive effort to both catch spies and to take them to our court system rather than resolve the issue in other ways.

Senator COHEN. You also mentioned the problem of leaks. Would you agree with former Director Bill Colby—I was on a program at one time with him and I think he indicated about 90 percent of all of the leaks came from the Executive Branch rather than Congressional? Based upon your own personal experience with the amount

of leaks that have taken place in the last several years, what is your assessment of that?

Mr. GATES. My experience has been that the majority of leaks come from the Executive Branch.

Senator COHEN. In the course of our investigation into the Iran affair, we learned about an offer made to the White House by an Israeli official to provide certain captured Soviet arms to the Nicaraguan resistance. And this occurred in 1986 while you were Deputy Director at that time. And according to our report, Admiral Poindexter had sent a note to Colonel North telling him to, "go ahead and make it happen as a private deal between Dick and Rabin that we bless." Then he instructed North to keep the pressure on Bill—I presume he is referring to Bill Casey—to, "make things right for Secord."

Do you have any knowledge whatsoever of this offer by the Israelis?

Mr. GATES. No, sir.

Senator COHEN. Do you know of any pressure being brought by Colonel North on the Director to facilitate this arrangement?

Mr. GATES. None that I am aware of.

Senator COHEN. Or that any action Mr. Casey might have taken to make it, quote, right for Dick?

Mr. GATES. None that I have seen.

Senator COHEN. Does it raise a question in your mind as to what the propriety of the CIA under any circumstances relying upon individuals to carry out Administration policy when those individuals might have a profit motive as opposed to a public purpose?

Mr. GATES. I think that the agency has to proceed with great care in making use of private individuals in operational circumstances, including a full knowledge of whatever motives that individual may have, and taking those into account. I am not prepared to say we should never use such a private individual but I think we need to do so with great caution.

Senator COHEN. When you do use private individuals, does that intensify your sort of oversight responsibilities rather than lessen them?

Mr. GATES. Yes, sir, I would say it would.

Senator COHEN. To the extent that they have a private or profit motive as well as perhaps a public service intent, you nonetheless have to take greater care in dealing with them.

Mr. GATES. Yes, sir.

Senator COHEN. Were you familiar with the paper prepared by Adnan Khashoggi, the so-called white paper that was being circulated here in Washington on his assessment or his view of the dynamics of the Middle East?

Mr. GATES. No, sir.

Senator COHEN. It never came to your attention during the time you were at the agency?

Mr. GATES. No, sir.

Senator COHEN. Have you seen it since it has been referred to during the course of these deliberations?

Mr. GATES. No, sir.

Senator COHEN. Did you have occasion to see the paper prepared by Graham Fuller?

Mr. GATES. Yes, sir.

Senator COHEN. Were you aware that that paper tracks pretty well what the Khashoggi paper said?

Mr. GATES. No, I did not know that.

Senator COHEN. Would that make a difference in terms of your review of the Fuller paper?

Mr. GATES. No, not really. The Fuller paper, I think it is worth commenting that one of the things that we try to do to encourage what I would regard as unorthodox approaches to analytical problems is to encourage individuals to write that we call personal think pieces about what ought to be done in a given situation or their own personal analysis that may not be agreed within the Intelligence Community. And if those are well done and if they have merit, we encourage them to circulate them to their close associates in the policy community and within the Intelligence Community, if for no other reason than to provide debate, and to bring new ideas forward. And it was in that context that Graham Fuller wrote that memorandum.

Senator COHEN. But you were unaware that another think piece had been written by a private individual who may have different motivations than simply reassessing our situation in the Middle East?

Mr. GATES. No, I was not aware of that.

Senator COHEN. You referred yesterday to Ollie North's cryptic reference to Swiss accounts. What was the cryptic reference he made at the time that——

Mr. GATES. I have been unable to reconstruct that. It occurred, as I recall, at the very end of the lunch. We were getting up to leave and he just made some reference to Swiss accounts and the Contras. And again, it was in the context of this discussion we had had with Colonel North about the Hasenfus plane and the private benefactors and so forth, and frankly, I just haven't been able to put it together.

Senator COHEN. Mr. Gates, Executive Order, I think it is 12333, gives the Director of Central Intelligence the sole responsibility for insuring the implementation of special activities. If you saw the responsibility for a, quote, special activity being diverted or taken from the agency and placed within NSC, would you have problems with that?

Mr. GATES. Yes, sir.

Senator COHEN. Isn't that what took place with respect to this entire affair, where a special covert operation was placed in the hands of NSC and taken out of the hands of the DCI?

Mr. GATES. I think that is correct. And in responding to one of Senator Nunn's questions yesterday, I did not respond very articulately. I think that, again, just from the standpoint of our officers' view of this, the NSC operation clearly was not just a diplomatic initiative. It was much broader than that. And I think our officers saw our role as that of logistical support for this NSC operation, and I think that the fact that the NSC was directing it and was guiding it, in effect, and it was being run from there, accounts for one of the reasons why some of our own internal procedures were ignored. I think that was a serious mistake. But I think that is the context in which it happened.

Senator COHEN. But the Executive Order places the sole responsibility with the DCI, not with NSC.

Mr. GATES. That's correct.

Senator COHEN. If you saw that taking place today—I know that the Carlucci recommendations would take away any opportunity for NSC to become involved in operational activities in the future, is that something that should be mandated legislatively?

Mr. GATES. I don't think so. I think that—as I indicated yesterday, I think a lot of different institutions have learned a lot of different lessons out of this entire affair. And if there is a positive side to it, it may be in that. And I have talked with Mr. Carlucci about this. My own experience at the NSC during the 1970's was that this kind of activity did not take place. I think that what we saw was an aberration in the system. I am not sure that it requires legislation to fix.

Senator COHEN. Could a Presidential Finding simply overrule or revoke Executive Order 12333? In other words, you have the Executive Order, the President signs the Finding and says I am going to place responsibility in the hands of NSC, or a group of people that I have faith and confidence in that can hold this matter closely. I don't even think I can trust NSC at this point because of its capacity to leak or tendency to leak. Therefore I want a very tightly held group, and I am removing operational responsibility from the DCI under the Executive Order. Could he do that by Presidential Finding?

Mr. GATES. Speaking candidly, I would have to talk to our General Counsel to find that out. I don't know.

Senator COHEN. If he could, would that change your opinion as to whether or not we should legislatively prevent that from taking place.

Mr. GATES. My own view is that it would be a mistake to immediately undertake new legislation growing out of this experience without having a little time pass and see what procedures and changes in process have been made to try and safeguard the system.

Senator COHEN. But the experience has worked well as long as it stayed within the Agency under the Executive Order. What took place, as you put it, was an aberration, and the question would be should we try and prevent such aberrations from occurring in the future.

Mr. GATES. Well, Senator, I think that this gets back to a point that Senator Nunn made yesterday or at least touched on. And that is you cannot, I think, expect to remove any basis for judgment or decision by senior policy officials legislatively without paralyzing the system. If you cannot have a system in which there is some confidence between the branches of Government, and confidence between the senior officials of the Government, A, that they will abide by the rules, and B, that they will deal with one another honestly, then I think the system begins to collapse, and I think that in that context trying to remedy what I would regard as a flaw in judgment having to do with the way this operation was carried out, by removing the possibility of anybody ever again exercising judgment, would probably not be a good idea.

Senator COHEN. Well, before you come to that conclusion, and I don't suggest that we have a legal remedy or statutory remedy for all the ills that afflict us—I don't believe that we can weave any sort of statutory web that will insulate this Government or this country against potential abuses in the future. But would it have paralyzed the Government, in your judgment, to have abided by the Executive Order that was on the books, that had worked relatively well over the years, that had set up an institutional mechanism whereby the agency would carry out and implement special covert activities and have certain reporting requirements pursuant to those activities? Would that paralyze the Government?

Mr. GATES. No, sir; I don't think so, no.

Senator COHEN. As a matter of fact, just the contrary took place. What has paralyzed the Government to date has been the aberrational act in cutting off that process, thereby putting it into the NSC with all the attendant consequences that will flow from it. That has a greater capacity to paralyze the Government than had we followed the existing rules, doesn't it?

Mr. GATES. Yes.

Senator COHEN. My time is up. Senator Specter is next.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Gates, there has been some suggestion that you ought not to be responsible for a policy which you did not start, when you were not the Director, and I have some questions about that, in view of your position as Deputy Director, the No. 2 man. In your testimony of April 10, of last year, 1986, in your confirmation hearings, you assured this Intelligence Committee that if there was erroneous information or incomplete information, that you would come forward and speak up.

This hearing is an important one for many reasons, but I believe that one of the reasons is that there are many officials in many bureaus in this country today who are watching this proceeding and are observing what is happening for someone who is a high ranking No. 2 man who plays it safe, doesn't speak up, then comes forward for a confirmation hearing and says well, in hindsight it should all have been done differently. And if that position can be taken, not to speak up and then to be promoted, and then to say, I should have done it differently and for the Intelligence Committee to say, let's start again, it seems to me to provide incentives for that kind of conduct and for a repetition of having this Committee kept in the dark. And that's why I am pursuing not what you are saying today, but what you had done in your position as Deputy Director. And that is why I weigh so much more heavily the actions that you took in that capacity. I think candidly it is easy to say today, I would have done it differently, but the real weighty considerations are what you did.

I go back to November 21, to the testimony given by Director Casey before this Committee; that was at a time when the Secretary of State was complaining to the President that the Intelligence Committee was not being properly informed. November 21 was the date where the Attorney General is starting to investigate and finding out about diversion to the Contras. It seems that among the few people in Washington who don't know what is hap-

pening are the Deputy Director of the Central Intelligence Agency and the Senate Intelligence Committee.

That is why I go back particularly to the testimony that was given by Director Casey on November 21. It was skimpy, scanty, uninformative, and really misleading. He doesn't tell us about covert activities which are carried on prior to a Finding being issued as required by law. He doesn't tell us important factors about operations going through a man named Ghorbanifar who fails two polygraph lie detector tests. He doesn't tell us about enormous problems which are happening with this operation for a long period of time. I don't want to make you responsible totally for what Director Casey does—in fact, I don't want to make you responsible at all for what he does. But the issue comes up as to your participation and what you did and what you had an opportunity to do. I think that Director Casey performed exemplary service in many, many ways, but a big focus of attention today—it may be the legacy of the Reagan administration—would be the Iranian arms transaction and diversion of funds to the Contras.

One concept that has crossed my mind is that if Director Casey were here today—suppose there had to be reconfirmation hearings—and Director Casey were up for reconfirmation to assume a second term, if that were the rule, and you were sitting on the Intelligence Committee, would you vote to reconfirm Director Casey?

Mr. GATES. Yes, sir, I would.

Senator SPECTER. Well, that is perhaps one of the first clear lines which has been drawn. Do you think that Director Casey's testimony before the Intelligence Committee was forthright and comprehensive and complete on November 21, 1986?

Mr. GATES. I believe that it was a fair statement of what we knew at the time. Senator, we had a very difficult time that week. We only had a few days for our officers to pull together information. And I think it is worth stressing and you can talk to any of those that were involved in the testimony. My guidance to those people was to put all the facts that we knew in that speech. That it was important, it was vital that if we were to avoid a big contretemps with the Committee, that it was important to get all of the information that we had available to us in that testimony, and get the facts out so that people would have confidence that we knew that we were being straight forward with them. I was not in a position to know what a lot of those operational details were.

Senator SPECTER. I am talking now solely about what Director Casey testified to. This Committee had expansive hearings in December, and when we finished that hearing process and published the report, the second report—we may have published the first report too—but published the second report, it bore no resemblance to what Director Casey had testified to on November 21. We heard from many, many CIA witnesses. Wasn't it important for Director Casey to tell us that a covert operation had been conducted without a Finding. Is there anything more fundamental on the law relating to covert activities than that there be a Finding and the CIA had undertaken a covert operation without a Finding?

Mr. GATES. Senator, the judgment at the time and to this day by our attorneys at the Agency was that the role that our officers played in facilitating the flight on the 22d and 23d of November

1985, was not an illegal action and did not require a Finding. There was no expenditure of appropriated funds and there was no agency operational involvement that would have required a Finding in the view of our attorneys. And the decision was made on the basis of information available to those at the time.

Senator SPECTER. Well, that is an interesting answer but to a different question. Let me repeat my question——

Mr. GATES. Well, there is no other case that I am aware of, Senator, where there was an illegal intelligence activity.

Senator SPECTER. Well, my question to you is shouldn't the Intelligence Committee have been informed that a covert operation was undertaken without a Finding?

Mr. GATES. What activity are you referring to?

Senator SPECTER. Are you aware of the fact that your predecessor, John McMahon, came before the Committee and emphasized his unwillingness to proceed at all with the transaction until there was a Finding and that there was a flurry of intensive activity involving your General Counsel, Stanley Sporkin, to have a Finding and to have the Finding predated or to apply to matters which had already occurred, and that there was consternation in the CIA that this activity had been undertaken without a Finding.

Mr. GATES. I don't think that that was the case, Senator. What happened was that when John McMahon found out the Monday or Tuesday after that flights had taken place that it had, and given his knowledge of what was going on, he knew that there would be further operational requirements upon CIA, and he made the judgment that—that a Finding would be required for those prospective activities as part of an ongoing process. He did not believe at that time, nor did our General Counsel, that the activity that had taken place over that weekend required a Finding, and that is still the view of our General Counsel.

Senator SPECTER. Mr. Gates, you are flatly wrong. Why did General Counsel Sporkin then draft a Finding which tried to cover CIA activities which had already taken place?

Mr. GATES. I was not there at the time. My impression——

Senator SPECTER. Are you aware that the General Counsel, Sporkin, drafted a Finding which purported to legalize after the fact CIA activity which had already taken place.

Mr. GATES. Senator, you would have to talk to Senator—to Judge Sporkin about his rationale for that. I can tell you——

Senator SPECTER. Mr. Gates—Mr. Gates, you were the Deputy Director of CIA at that time.

Mr. GATES. No, sir, I was not.

Senator SPECTER. Well, you were the Deputy for Intelligence operations of CIA at the time.

Mr. GATES. I had no association with the operational side of CIA at that time.

Senator SPECTER. Well, you have since become Deputy Director and you have since become the Acting CIA Director. Have you never learned that the General Counsel of the CIA tried to draft a Finding which would cover a covert activity which had occurred prior to the date of the Finding?

Mr. GATES. Yes, sir, I am aware of that.

Senator SPECTER. Well, if you are aware of that, then how can you say he didn't try to do it——

Mr. GATES. I am not saying he didn't try to do it.

Senator SPECTER [continuing]. And that there wasn't a Finding drafted by Sporkin to cover CIA covert activities prior to the date of the Finding.

Mr. GATES. That is my understanding, yes.

Senator SPECTER. Well, are you saying that he tried to do that even though it was unnecessary to do?

Mr. GATES. That is what the General Counsel at the time said, and that is what our General Counsel to this day continues to say, sir.

Senator SPECTER. Well, I think you're wrong, Mr. Gates.

Mr. GATES. That that's what our General Counsel says?

Senator SPECTER. Why would General Counsel Sporkin go to the length of drafting a Finding which attempted to legalize an activity which had already occurred if it wasn't necessary under the law?

Mr. GATES. You would have to ask Judge Sporkin that. I don't know.

Senator SPECTER. Well, I have asked Judge Sporkin that and he has said that he did so because he thought it was necessary, because there was a concern in his mind that the CIA had undertaken a covert activity without a Finding and that he was worried about it and that he wanted to cover it by having a Finding which retroactively covered CIA activity.

Mr. GATES. Well, Senator, all I can tell you is that in checking into it and trying to determine whether there was an illegal activity, I have consulted with our General Counsel and I have to defer to his judgment on the question of whether a Finding was required for that activity.

Senator SPECTER. Well, Mr. Gates, I said it was an interesting answer to a different question, because the question that I asked you was not whether it was legally necessary, although I think as a lawyer with some experience in the field, that it was; the question I asked was, wasn't that a matter of sufficient importance to be brought to the attention of the Senate Intelligence Committee when Director Casey testified before this Committee on November 21?

Mr. GATES. Well, I would have to talk to those who drafted the testimony to determine what rationale there may have been for not putting it in. My guess would be that it was because it was not determined to be an activity for which a Finding was required.

Senator SPECTER. Well, Mr. Gates, when you say you would have to talk to those who drafted the testimony, again you try to distance yourself from that testimony. Yesterday you were asked the question, did you personally participate in the drafting of the testimony. And you said, no, you didn't personally participate. But that is a shading which I find to have an element of dissembling because you read two or three drafts of that testimony, didn't you?

Mr. GATES. Yes, sir.

Senator SPECTER. And you took the strategic lead in preparing the testimony as you testified, didn't you?

Mr. GATES. In giving the guidance to put all the facts on the table, Senator.

Senator SPECTER. Well, in a context, Mr. Gates, where you take the lead in preparing the testimony, and you review two or three drafts, and I now ask you a question, why the testimony omitted a very important factor, is it appropriate for you to say, I don't know, I would have to consult with the people who prepared the testimony?

Mr. GATES. Senator, when I am not aware of the specific facts involved in the situation, I have to rely on those people.

Senator SPECTER. Well, you knew at that time that there had been an effort by the General Counsel to prepare a Finding to retroactively cover CIA activity. You knew it at that time, didn't you?

Mr. GATES. There were a great number of aspects of this affair that I did not learn about until the last week in November in those kinds of details.

Senator SPECTER. Well, aside from the ones you didn't learn about, how about the ones you did learn about. My question to you is, didn't you know that Sporkin had prepared a Finding to cover this CIA activity after the fact.

Mr. GATES. And that it had never been signed.

Senator SPECTER. Well, that's another interesting answer to a different question, as to whether or not it was signed. But you did know that Sporkin prepared the Finding.

Mr. GATES. Yes, sir.

Senator SPECTER. And you did know that it was omitted from the November 21 testimony. I am trying to understand your judgment, Mr. Gates, as to whether you think it was appropriate for the Director of the CIA to appear before the Senate Intelligence Committee and omit that factor among many, many other important factors. That is the first question I have asked you.

Mr. GATES. Senator, we were trying to get all of the facts that we knew into that testimony. There were a number of facts and a number of details that we did not know. In my view, we did not know all of the details about our involvement in the November activity, November 1985 activity, in terms of the role of our officers in the field and what they knew at the time, when that testimony was put together. We were trying to put together an accurate account of exactly what we knew.

The Director acknowledged in his testimony that we were still gathering facts, and that more information would be made available. And as we have learned those facts and that additional information, it has been brought to the attention of this committee

Senator SPECTER. Well, we can only take the facts up one at a time. It takes 10 minutes or more to cover one fact. I want to cover one more and then I will desist, Mr. Chairman.

Senator Cohen asked you a question——

Chairman BOREN. Senator Specter, I wonder if we might, because there are others that want to ask questions, we'll come back to another round, we'll allow you the full opportunity to ask additional questions.

Senator SPECTER. I'll await the next round. Thank you, Mr. Chairman.

Chairman BOREN. The Chair wants to accommodate members as much as possible. Senator Roth is in the midst of an important meeting of the Government Operations Committee which also has

some items on the agenda of interest to this Committee, and it is important that he be here, and with the understanding of the other members of the Committee, I would like to call upon him. He has two brief questions he would like to ask and he needs to go back to the Committee. So Senator Roth will be recognized at this time.

Senator ROTH. Thank you, Mr. Chairman, and I appreciate the fact that the others have let me go out of turn.

As you have indicated, the Government Affairs Committee is holding hearings with the Comptroller General as to the adequacy of financial management, and some very serious questions, Mr. Gates, have been raised with respect to the accountability of the CIA. As I understand, even though it has the authority, in fact the General Accounting Office does not have access to CIA accounts so that they can audit what are basically unvouchered disbursements.

Now, I also understand that the General Accounting Office has a special team, a special team that has proper security clearance for sensitive audits. For example, it already is involved in conducting audits of the National Security Agency, of the so-called black money accounts in the Defense Department. I know there is some concern in the Government Affairs Committee that when GAO seeks any access to CIA, that the rationale is used, well, the Intelligence Committee has jurisdiction and that is adequate, so there is no need to audit it.

Mr. GATES. Yes, sir.

Senator ROTH. Precisely let me ask you this question. How can, under these circumstances, Congress be assured that unvouchered CIA accounts are being accounted for properly?

Mr. GATES. Well, we are prepared to work out whatever arrangement. There are already arrangements with the Intelligence Committees. We are prepared to pursue with the Committee any additional arrangements that it might wish to develop in terms of monitoring those accounts.

Senator ROTH. Now, I understand there are some complicated situations, that a paper trail is not necessarily wanted to the last expenditure in a covert action. But I guess the question I really have, because I am concerned, I think it is important that if you become Director of CIA upon confirmation, that you sit down with representatives of this Committee, the leadership of this Committee, as well as the Governmental Affairs Committee, to see if a proper means, proper access can't be worked out so that there can be some kind of independent check. Would you be willing to undertake that task?

Mr. GATES. I would be happy to sit down with the leadership of the 2 Committees to see what we can work out.

Senator ROTH. Well, Mr. Chairman, I think this is an important matter for this Committee as well as for Governmental Affairs. There are special considerations. I do think it is important that we have some independent review and check that assures that the money is being spent for the purpose intended by Congress, while at the same time we don't want to become involved in the kind of detail that would unnecessarily jeopardize such an undertaking, or the lives of people.

So, I would respectfully request that—that this Committee, together with Governmental Affairs, and the new Director, under-

take whatever measures are necessary to ensure that just those steps are taken.

Chairman BOREN. Senator Roth. I think your point is very well made, and we will certainly do that. I have had some conversation already with the Chairman of the Governmental Affairs Committee about this matter and we will follow up with it and when the new Director is in place at the agency, I think it would be very appropriate for us to work together to set up the very kind of mechanism that you have described, and I appreciate your raising it in these hearings.

Senator ROTH. Thank you, Mr. Chairman.

Chairman BOREN. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, thank you.

Mr. Gates, I want to revisit just a minute the time period in your statement of December 5, when you met with John McMahon and other CIA officials to prepare for the meeting of December 7, with the President and the Cabinet members. Do you have that time frame fixed in your mind?

Mr. GATES. Yes, sir.

Senator DECONCINI. Now, it was your statement that there was reference to flights that had taken place a few days earlier, is that accurate?

Mr. GATES. To a flight, yes, sir.

Senator DECONCINI. Yes. What references were those, do you recall? What information was brought up at that?

Mr. GATES. The only way we have really been able to reconstruct that meeting was from some abbreviated notes that Mr. McMahon's assistant made at the time. And the only thing that I can recall—I think those notes are in the hands of the Committee, and they may provide some additional detail.

Senator DECONCINI. What do you remember, Mr. Gates?

Mr. GATES. I just remember the fact that there was a discussion that a flight had taken place, that there likely would be other flights, and at that point Mr. McMahon asked one of the operations officers if the Finding had been signed, and the operations officer replied that he thought it had.

Senator DECONCINI. Was it clear to you that the CIA was participating in those flights?

Mr. GATES. It was not entirely clear to me that we had participated in the earlier flight. As I say, there wasn't a lot of discussion about the details. I think that it was by inference I assumed we would have some role to play in the future flights because of the assumed need for a Finding.

Senator DECONCINI. Did the query come to your mind as to who might have made those flights, if it were logistically put together by the CIA, or did you assume that it was put together by the CIA?

Mr. GATES. I didn't know how the flight—I didn't really know anything about the flight on the 22d or the 23d, and frankly, in my position as Deputy Director for Intelligence, it was not a matter with which I would have been really associated or even have any reason to pursue.

Senator DECONCINI. Well, you mentioned earlier this morning about logistics, and don't let me put words in your mouth—the difference, I gather, from logistical support to actual covert use of

operational moneys—is that accurate? Do you see a distinction between giving logistical support and actually diverting funds from one account to some operatives under a covert activity that there has been a Finding and everything is according to the law?

Mr. GATES. Well, I certainly believe that the logistical role that we played in the Iranian affair was part of a covert activity.

Senator DECONCINI. There's no question in your mind?

Mr. GATES. No, sir.

Senator DECONCINI. So it is fair to say that if your agency was tasked by NSC or anyone else to give logistical support only—no money—but to give some personnel or some advice or to make reservations or to enter into a contract that might even be paid by another agency, you would consider that as part of a covert activity?

Mr. GATES. Well, there are different aspects of that. If it is simply a matter of providing advice or facilitating a flight in which there is no expenditure of appropriated funds or a determination is made that no Finding is necessary, given the nature of that role, then that would not necessarily be a covert action in the strict sense of the word in terms of requiring a Finding.

Senator DECONCINI. Well, if the NSC, as we have in this case, was involved in a covert action, at least in my observation, and the CIA was asked to give some logistical support, find some airplanes, whether or not you were supposed to pay for them or not, I don't know, would that be considered in your opinion, part of that covert activity?

Mr. GATES. Again sir, it would depend on the circumstances. The conditions at that time were, as I have learned in recent weeks, that we were requested first of all, to facilitate landing rights in a European country for an airplane belonging to another country, a third country, and we approached a government and——

Senator DECONCINI. And that's all you knew about it?

Mr. GATES. At that stage it was simply a matter of making an overture to our contacts in that country and asking them for their support in securing the landing rights. That flight never took place.

Senator DECONCINI. When did that first come——

Mr. GATES. Earlier that same week, around the 19th or 20th of November. And it was subsequent to that when that flight did not take place that Colonel North asked our—called one of our officers, one of our senior officers and asked if there were a reliable airline available that could fly a charter, a privately funded charter, that was reliable and secure. And given the very short period of time involved, we were unable to make contact with another airline to see—a regular, commercial airline, to see if they would be able to take on this charter, and as result our officer suggested that if it were a straight commercial transaction, they could simply hire one of our proprietary aircraft. And it was under those circumstances they then paid—it was a straight commercial charter for which they paid I think the going commercial rate of $127,000 for this activity. But other than providing the name of the airline for this commercial transaction and the fact that for the protection of our airplane we had our various officers along the route alert the gov-

ernments involved, there was no expenditure of appropriated funds——

Senator DECONCINI. Well, Mr. Gates——

Mr. GATES [continuing]. And it was in that context, sir, that the decision was made a Finding wasn't required.

Senator DECONCINI. Yes, I understand that. What troubles me is that when someone from the NSC or if the Secretary of Defense or the Chief of Staff of the White House calls you up and says, hey, we need you, the CIA Deputy Director or the position you held there, or if you were the Director, we need for you to make special landing rights arrangements for a flight to a foreign country, or we would like you to help us find an airplane to transport something. Now, does that not alert you to something? Some questions should be asked and you ought to know what in the world is going on before you proceed with making such arrangements, and contacting the foreign country. Should you, when those things come about, have asked those questions?

Mr. GATES. Well, I was not in a position where I would have had anything to do with those arrangements at the time, but I can tell you in retrospect my own view is that having been asked for operational support, I would have, I think, asked some additional questions.

Senator DECONCINI. Were any questions asked that you know of?

Mr. GATES. My reading of the record of what our senior officials agreed to or what transpired in that period, was that there were no questions asked beyond the fact that it was a regular commercial transaction.

Senator DECONCINI. Do you believe that no questions were asked by these leaders of the CIA, that they wouldn't ask questions?

Mr. GATES. When they had gotten the earlier request for—and again, I am trying to recapture events in which I had no participation, in the earlier request that they had received from Colonel North for help, it was clear that it was in the context of a humanitarian mission associated with the release of hostages. That was the justification that was given.

Senator DECONCINI. Which in your mind would not require asking any questions like what is all this about, would you please tell me?

Mr. GATES. Senator, this is the one place where I believe that our regulations were violated in that to provide any kind of operational support from the White House office or the NSC, we have a regulation that requires that the Director or the Deputy Director—the Director's approval be sought. That was not abided by in this case.

Senator DECONCINI. And that means knowledge of what they are doing.

Mr. GATES. And I believe that if Mr. McMahon had been informed in advance, he would have asked other questions.

Senator DECONCINI. If you were the Director and such a request came from the Chief of Staff of the White House or the National Security Council, you would—you are telling this Committee you are going to ask what it is all about, and not just say sure, we'll be glad to contact that country about foreign landing rights.

Mr. GATES. You can bank on it.

Senator DECONCINI. And if they use the word, well, look, Mr. Director, this is a humanitarian program, you don't need to know, it is not covert. Are you going to assure us that you are going to want to know before you lend any effort at all from your Agency?

Mr. GATES. I think that one experience in not knowing fully about an operation in which we are engaged is enough.

Senator DECONCINI. Well, I agree, and what troubles me is not only did it happen, but these are people with whom you have been closely associated. My question to you and you have already answered it that you didn't know—my question to you is what kind of communications do you guys have out there that you don't share this with your top echelon?

Mr. GATES. It is not at all unusual for the head of the analytical organization not to be informed about operational details being carried out by the clandestine service. Those operational details are usually communicated either to the Director or the Deputy Director, depending on the circumstances, or both. But it is not at all unusual for the Deputy Director for Intelligence not to know about those kinds of things.

Senator DECONCINI. Would they tell you if you asked, the Intelligence Director?

Mr. GATES. As the Deputy Director for Intelligence?

Senator DECONCINI. Yes, what if you walked in there and said, gee, I just heard that somebody wants us to do something about landing rights or something, can you tell what this is. Is that a proper procedure?

Mr. GATES. Well, Senator, one of the aspects of our culture is the whole world of compartmentation of operational activities in which we have grown up that if we do not have a perceived need to know about a specific operation, we try not to pursue that. I think that if I had gone in and made a big stink about it, either to the Director or Deputy Director that I probably could have gotten that kind of a briefing.

Senator DECONCINI. Mr. Gates, I have another question, my time has run out. I will submit it to you regarding the 1982 Project Democracy, and what you know about it and what you know the CIA did in it and what Mr. North's involvement was. I would appreciate if you provide that response for us in writing.

Mr. GATES. Yes sir.

Chairman BOREN. Senator DeConcini, you've been waiting patiently and, yesterday you gave up your turn at one point, so I'd like to let you go ahead and ask that question.

Senator DECONCINI. Thank you Mr. Chairman. In 1982, Mr. Gates, Project Democracy was established to promote democratic ideas. Later that year its scope was expanded to include scholarships of what appears and is reported to be of covert actions. Since then it's existed as an umbrella organization, headed by or at least influenced substantially by Lieutenant Colonel North, and operating out of the NSC to implement some of the doctrines, particularly the Central American doctrine of privately raised funds for the Contras. Previously such activities were carried out by the CIA. Funding for Project Democracy came from donations from private individuals such as Mr. Murdock, Clement Stone, and Charles Wick is said to have played an important role in lining up donors. Other

funding came from foreign governments. What I'd like to know from you is your knowledge of Project Democracy and are you aware of the CIA providing assistance to Project Democracy? Sponsorship and covert activities that it was involved in?

Mr. GATES. Senator, I was aware of the existence of Project Democracy. I am unaware of any CIA involvement in that project. I have, in light of the newspaper stories of the last couple of days asked our Inspector General to initiate an investigation also of that to assure that, in fact, there was no connection. But I am not aware of any at this time.

Senator DECONCINI. Did you ever have any discussion with Colonel North about it?

Mr. GATES. No Sir.

Senator DECONCINI. Have you ever had any discussion with Col. North?

Mr. GATES. Yes, sir. During the first several years of the Administration there existed, and still does, a senior level group called the Crisis Pre-Planning Group that is comprised of senior representatives from the Departments of State and Defense, the Chairman of the Joint Chiefs of Staff, and CIA. That group was essentially the interagency coordinating body for developng policy options on a variety of issues from Lebanon to Iran/Iraq War, to Grenada, to a host of other foreign policy problems, the Philippines, and so on. Col. North was one of the moving forces behind that group in getting it set up and for a couple of years served as its Executive Secretary in effect, and that's where I came to know him.

Senator DECONCINI. And you had no discussions with him regarding this——

Mr. GATES. No sir.

Senator DECONCINI [continuing]. Covert activity that the NSC was involved in?

Mr. GATES. No sir.

Senator DECONCINI. Thank you. Thank you Mr. Chairman.

Mr. GATES. Mr. Chairman, I might just take advantage of this opportunity in light of Senator DeConcini's remarks about the November flight to simply say for the record that one of the injunctions that I have issued as Deputy and particularly as I have learned more and more about the affairs—the events that took place between November 1985 and November 1986, is that precisely to get at the kind of problem that Senator DeConcini has identified, I issued an instruction that those managing our agency's operational assets should assume that any request for the use or any use of those operational assets, aircraft, etc., they should assume from the beginning that a Finding is required. Only later if counsel determines that it is not, can they then proceed without one. But they should begin with the assumption that a Finding is required.

Chairman BOREN. Is that directive still in force?

Mr. GATES. Yes, sir.

Senator DECONCINI. Mr. Chairman, if you'd yield. Is that not a regulation now, one that you just put in place?

Mr. GATES. It is one of those areas that has been covered in practice a specific regulation to that effect. This

also I must admit is an oral directive that I gave to the head of that unit. It'll also be in writing soon.

Senator DECONCINI. Now just to follow that up, the regulation you put in, or the directive you put in is that they must make an inquiry. Is that correct?

Mr. GATES. They must assume when they get a request from anyone——

Senator DECONCINI. From anyone?

Mr. GATES [continuing]. Including within the Agency for the use of operational assets, such as airplanes and so on, they must assume from the outset that that requires a Finding, and go through——

Senator DECONCINI. What about just inquiries as to logistical support? Other than your spending money? What if they say we want an airline that will transport things for humanitarian reasons to some foreign country; we're going to pay for it; can you help us? How will that fall into your———

Mr. GATES. That would be assessed very closely by the attorneys that we have assigned to the Directorate of Operations. We have a number of attorneys assigned to the Directorate of Operations to try and promote and ensure compliance with the various regulations and laws. We have an attorney assigned to each of our major operational activities as well as other compliance officers, so any request such as that would have to go through one of those officers.

Senator DECONCINI. You are saying then that the General Counsel's office or the attorneys would end up making that decision?

Mr. GATES. Yes, sir. I'm making a recommendation.

Chairman BOREN. If those guidelines had been enforced in November 1985, would that flight have been able to take place as it did?

Mr. GATES. I think that if the regulation requiring the notification of the Director or the approval of the Director, or the Deputy Director, to carry out any operational request for the White House had been observed, that that flight may well not have taken place. If they would have, if it would have required Mr. McMahon's specific approval as the Acting Director.

Chairman BOREN. In your directive now can an assumption be made that a Finding would be required for that type of support?

Mr. GATES. Again, it gets into the legal issues about whether or not a Finding was required for that activity but that determination would have had to have been made consciously before the flight took place.

Chairman BOREN. Senator Hecht.

Senator HECHT. Thank you Mr. Chairman. First of all, Mr. Gates, I want to compliment you on your openness and candor yesterday and today. I see a lot of young people in the audience; I think you've been an inspiration to the American way of life. You show a sharp contrast to the closed society of the Soviet Union; particularly, apropos what I mentioned yesterday about America's being bombarded by the greatest Soviet propaganda barrage in 50 years. I would bet these young students here that they'll never see the head of Soviet Intelligence being questioned by Senators; then walking out of here and being questioned by the press. I'm not going to continue on with the focus of the Iran/Contra, because

there are other groups working on this right now at the taxpayer's expense. Let's get on with a sound national intelligence program. I want to follow up on two less sensational, but highly important points about how you would handle the DCI job. In national intelligence management and control, I'm not clear about your approach to the DCI job. Would you please give us a more specific view of the DCI's national intelligence community role?

Mr. GATES. Senator, I think that one of the most important contributions that Bill Casey made as Director was to bring together, under his leadership, the different elements of the Intelligence Community; the Defense Intelligence Agency, the National Security Agency, and so forth. For the first time in the history of the community the principal officers of these organizations met at his behest twice a year outside of Washington to talk about the future, to talk about priorities and to plan strategy for the future. I think that kind of leadership role for the community and the harmonization of it is a terribly important aspect of the Director's role and insuring particularly that the diverse military intelligence organizations feel like they have a real say and an important voice in the making of intelligence policy and the decisions that the Director makes. And I think that kind of harmonization role and coordinating role for the community is a very important one for him.

Senator HECHT. Do you see the DCI's relationship to the other intelligence agencies as a coordinator, as a boss, or as a budget program manager?

Mr. GATES. Well I would characterize it more as a coordinator and budget program manager. I think that one of the things that Mr. Casey demonstrated was that you don't have to be the formal boss or have statutory authority in order to bring people together and have them cooperate and work productively. I think that the fact that the Director has to make budget decisions for the other elements of the community is certainly an important tool for him in coordinating the activities of the community but I think that trying to force people to recognize his authority has been tried in the past. Quite frankly, and I think that it has led to, in the past, to serious disharmony in the community and that would not be my approach.

Senator HECHT. Second, would you please be more specific about how you would use Team B competitive analysis process. Would you go outside the contract-consultant-university process to get independent nationally recognized authority to furnish more independent judgement?

Mr. GATES. Yes, sir. And I think that one of the studies that we will soon be making available at the request of one of your colleagues is an example of that on an alternative view or an independent view of why the Soviets violate arms control treaties. I think analysis, by an individual, rather than one of the usual contractors is an example of the kind of competitive analysis that you're describing.

Senator HECHT. Could you go more into detail on that?

Mr. GATES. Well it is on that particular study. It is a study that frankly arrived on my desk only about a week ago. For reasons that may seem apparent, I haven't had the opportunity to read it. It's about 200 pages long. But it is an effort that was commissioned

by our Arms Control Intelligence Staff with an outside expert on the Soviet Union to do an analysis of the Soviet record in violating arms control treaties and to address the question of why they do so.

Senator HECHT. Would this information, after you have it compiled and analyzed, be given to our negotiators in Geneva?

Mr. GATES. Yes sir.

Senator HECHT. Thank you very much.

Chairman BOREN. Senator Bradley.

Senator BRADLEY. Thank you very much Mr. Chairman. Mr. Gates, yesterday when we were in the midst of our conversation we had to break off. I would like to come back to the issue of the meeting on October 1st that you had with Mr. Allen when he told you that he believed that money from the sale of U.S. arms to Iran was being diverted to the Contras. My question then to you was why didn't you have an electric shock go through your body at that point, realizing that it was possibly a violation of the law and it was clearly a betrayal of congressional confidence? And then I went on to talk about the meeting with Furmark and Casey which we set aside because, according to your information, it only dealt with the national security question not the diversion of funds. Then we came to the conversation with Colonel North, on October 9, that alluded to Swiss accounts and money to the Contras.

My question to you was why did you not commence an investigation and you were about to answer that question. At that point, why did you not realize what a threat this posed to the whole Agency, the whole intelligence budget? That there was a betrayal of congressional confidence and a possible illegality?

Mr. GATES. Senator, again, the information that Mr. Allen brought to me on the 1st, he described as speculation, he was not as confident as you just described him in saying that he believed money had been diverted. In fact, he said it was a possibility in his view. But he acknowledged that he had no evidence.

My objective at that point was to get him to present that information to the Director who had been following this program more closely than I had and he did so. It was across a weekend and there was a lot of other things going on. He did that on the 7th when the Director gave him the instruction to write all this down. And we got that on the 14th. Now the memorandum that we received from him on the 14th, was even more vague, even more speculative than the information he had conveyed to me orally on the 1st. On the 14th in this memorandum, he said that—out of this seven page memorandum, there was one sentence, and that sentence said that if the Iranian intermediary, who by that time was really annoyed because he hadn't gotten his money, decided to go public and to try and to embarrass the United States Government, there were a number of allegations he might make, one of which was that some of the money from the arms sales might have been diverted to other projects of the United States or Israel. A very much broader kind of thing.

Now, I told our General Counsel all of that, shared all of that with him on the 15th. And it was the General Counsel's view to whom I was looking for advice, because I didn't know large elements of this—that that information should be sent down to Admiral Poindexter, and that we should recommend the White House

Counsel look at it. It was not our General Counsel's recommendation that I go to the Attorney General, or that it looked like we had a serious crime here or a problem. And I took his advice.

Senator BRADLEY. So you basically passed the buck to Poindexter?

Mr. GATES. Senator, you know, I think it's important to put this in some perspective. I was giving this piece of speculation on the 1st of October. Now we can look back with five months hindsight and all the newspapers and all the investigations that have taken place since, and ascribe a great deal of importance and legitimacy to the NIO's concern on the 1st of October. But this concern, on the 1st of October, at that time, was presented in isolation from any other activities that were going on in terms of any problem. And my reaction to that as I indicated yesterday—and we may quarrel about whether I should have launched an aggressive investigation and I said yesterday, I sure wish in terms of the appearances in this hearing, I had, and I think that that probably if I had to do it all over again, I would do that—but the fact is that the basic motivation was not to sit on the information, not to try and cover it up, not to shut up Mr. Allen, but instead to move the issue to higher levels of authority and responsibility who had a broader knowledge about what was going on. And that's what I did. Now you can call that passing the buck, I call it trying to get it into the hands of those who are better prepared to evaluate the information that we had gotten.

Senator BRADLEY. So you passed it to Poindexter, and then you essentially left the country. [Laughter.]

Mr. GATES. That is correct.

Senator BRADLEY. Now in your December 5th testimony, here's the way you described that. You say in answer to a question by Senator Bentsen—I went overseas for 2 weeks to seek a safer clime—what does that mean?

Mr. GATES. That was a feeble attempt at some humor in a rather intense hearing, Senator. Something I have been unable to repeat in the last day or so. [Laughter.]

Senator BRADLEY. Now when you asked the General Counsel to look into this matter, again from your hearing record on December 5, 1986, did you ask him, or do you know if he did review the Allen analysis or any intelligence that supported it?

You said on December 5, 1986, "I don't know what he looked at." That's your response. "I don't know what he looked at. I left town 2 days after I told him to look it over and see if there were any problems for the Agency."

You gave him no specific instructions, no specific concerns——

Mr. GATES. I gave him all the information that I had that included Allen's analysis. And I told him then to go look into it. The response to that question on the 4th, was simply that I did not elaborate for him exactly who he should go talk to or exactly what institutions he should consult. He is the General Counsel, I expected him to know. I gave him the people who were involved and made sure he knew about Allen's analysis, and the concerns Allen had raised and asked him to look into it to make sure that everything we were doing was proper.

Senator BRADLEY. But you gave him no specific instructions? No real concern that you might have that the agency might be in danger or the entire Intelligence Community endangered by potentially illegal action?

Mr. GATES. Senator, I wouldn't have called him in and asked him to look at the whole thing if I weren't concerned.

Senator BRADLEY. You've given in your answer to why you did not pursue Lieutenant Colonel North's passing and cryptic remark at the end of the lunch—this is in your written interrogatory—first, "I didn't really understand what he was talking about," and second, you say, "legal limits", and then you say, "we did not want to get as close to the private benefactors as would have been required to collect such information because we did not want to do anything that could be misinterpreted as a CIA violation of statutory prohibitions." What statutory prohibition?

Mr. GATES. Senator, as I indicated in the hearing yesterday, we had, in my view, we had four different pieces of legislation, having to do with our relationship with the Contras. Beginning in October 1984, and stretching through October 1986. At each stage in that, in those changes of legislation the rules changed for us, incrementally. First, a total prohibition, then you can give them a little information, then you give them a little more information——

Senator BRADLEY. But Mr. Gates, this is October 9th. This is October 9th.

Mr. GATES. But we were talking about——

Senator BRADLEY. There were no prohibitions. The law expired October 1. So, how can you put in your testimony as an excuse, the existence of a statutory prohibition that no longer existed.

Mr. GATES. Because we were talking among other things about retroactive, we were looking backward and also, Senator, the other piece of legislation——

Senator BRADLEY. No, we were looking forward, Why didn't you take these statements by North and aggressively seek an investigation? You've given the response that you didn't because of a statutory prohibition that was no longer in effect.

Mr. GATES. Well, we still had the statutory prohibition against investigating Americans, Senator. And we knew or believed that some of the key players in this activity were Americans.

Senator BRADLEY. But, yesterday, the only statutory prohibition you cited were laws relating to U.S. Government involvement with the Contras.

Mr. GATES. Well, sir—no, I mentioned the activities directed at Americans also. To be perfectly candid, we had operated under these rules for 2 years plus, and we were continuing to do so at that point.

Senator BRADLEY. Well I'm afraid that if that's the statutory prohibition you were speaking of, that you were not clear on that yesterday. In fact, I don't recall you saying that the statutory prohibition was the prohibition against investigating Americans.

Mr. GATES. I mentioned both the 4 pieces of legislation on the Contras, and the investigation of Americans.

Senator BRADLEY. But you admit that the legislation on the Contras had expired.

Mr. GATES. Yes sir.

Senator BRADLEY. That those were no longer prohibitions.

Mr. GATES. That is correct.

Senator BRADLEY. My time is up, Mr. Chairman, but I would like to come back to this because I think that this illustrates one of the problems here. Because, on the one hand, you say that if you had October/November to do over again, you would have been much more aggressive in pursuing the Contra facts, and on the other hand, you continue to assert that there was just flimsy speculation. This contradiction is serious. You can't have it both ways. You either should have pursued it, and you made a mistake, or there was only flimsy speculation, and you should not have pursued it.

Mr. GATES. Senator, the problem was that, as I indicated yesterday, there were large parts of this activity in which the Agency had no information, the financial mechanisms with respect to both the Contras and the Iranians and there were large parts of that in terms of the operational details with which I was unfamiliar. You know, I think for what it's worth, it seems to me that over a period of 5 years, I have developed, I am told something of a reputation for candor and forthrightness with this Committee and with the House Intelligence Committee. I continue to believe that while I may have made some tactical mistakes in perhaps not launching an aggressive investigation in early October, the actions that I did take were directed at trying to get more information in the hands of the right people in terms of trying to find out whether in fact something was really wrong. Now we can argue 5 months later that I didn't do enough, but every action that I took was aimed at getting the information into the hands more of people who knew more. And I believe that the actions that I have taken subsequent to that time as Acting Director in connection with Costa Rica and these investigations, would tend to credit the fact that I have continued to try and establish a relationship of confidence of keeping this Committee informed.

Senator BRADLEY. Mr. Gates, I appreciate that. But in pursuit of the point, you were always trying to get it to somebody who had more knowledge. You bucked it to Admiral Poindexter. Did you ever ask Admiral Poindexter, point blank, "Is there a diversion of funds to the Contras?"

Mr. GATES. No, sir, I did not.

Chairman BOREN. Mr. Gates, I want to ask a question on behalf of Senator Nunn, who had to leave. As you know, under President Carter's Executive Order on intelligence activities, heads of the intelligence community were required to report to the Intelligence Oversight Board if they became aware of activities that, I want to quote now the Carter Executive Order—raised, "a question of illegality or propriety". Now that Executive Order had been modified by President Reagan in 1981 to say only that reports shall be made concerning any intelligence activity of the organization that they have reason to believe may be unlawful. If the language of the Carter Executive Order had still been in effect requiring reporting of questions, illegality or propriety, would you have felt an obligation and reported this activity or the potential of the fund diversion to the Intelligence Oversight Board?

Mr. GATES. If it had concerned an intelligence activity, yes sir.

Chairman BOREN. And what you now know in terms of what was going on at the time, what you now know in terms of the diversion, would you have felt an obligation to report it even though it was taking place at the National Security Council.

Mr. GATES. Yes, sir.

Chairman BOREN. Do you believe that President Carter's Executive Order and the language contained in it would have insured better oversight than the language now contained in the Executive Order?

Mr. GATES. I'm not sure that that would be the case Senator. I think that if we knew now what we had known last fall, even under the current Executive Order, I think we would have reported it.

Chairman BOREN. Would you advise the President, in the light of the experience we have been through, to broaden the reporting requirement to include questions of improper propriety as well as questions of legality in terms of reporting?

Mr. GATES. Yes, sir, I would have no problem with that.

Chairman BOREN. I also want to ask a question on behalf of Senator Hollings.

Mr. GATES. Mr. Chairman, could I respond for the Committee on a question that Senator Nunn raised yesterday?

Chairman BOREN. Yes.

Mr. GATES. He raised the question of reporting illegal intelligence activities by the NSC and whether I would feel obligated to report on that. Frankly, I was confused by the question in the sense that I was trying to respond in the context of Executive Order 12333, which enumerates the agencies of the Intelligence Community and the responsibilities of the Director with respect to reporting on those. After reviewing the statute last night with our General Counsel and the Executive Orders, I can reaffirm what I told Senator Nunn later in the afternoon. While the under the statute in the Executive Order the heads of each of the agencies has primary responsibility for reporting illegal activities of that sort, the DCI clearly has a responsibility to do so as well. And I would consider it my obligation to report to the Intelligence Committees, any illegal intelligence activity by any agency.

Chairman BOREN. Including the National Security Council.

Mr. GATES. Yes, sir.

Chairman BOREN. I appreciate that clarification and I understood that to be your position from the questioning which I conducted with you later in the afternoon, but I think it's important that the record be clear on that from that point.

Senator Hollings has requested that I ask you about the report of the House Intelligence Committee which was issued on February 4th in regard to the counterintelligence and security concerns. A report which was sharply critical in some aspects of our efforts to develop adequate counterintelligence programs. Are you familiar with that report?

Mr. GATES. Yes, sir.

Chairman BOREN. What is your reaction to the conclusions reached by the report.

Mr. GATES. I think that while the report overstates some problems that its general diagnosis of the problem is pretty much on

the mark. And we have undertaken a number of actions in the community pursuant to both the House report and the Senate report on the same subject from this Committee and as reflected in the President's report on the same issue. We think that in general, that the specific areas in need of greater attention identified by the House, reinvestigations, firing practices, need to know, overclassification, coordination and communication within the community are all areas in which there can be further improvements and we have initiative underway to make improvements.

Chairman BOREN. Are there initiatives also underway in the treatment of former employees of the Agency, those who have either been voluntarily or involuntarily severed in order to make sure that they do not compromise information which might still be of current benefit to our adversaries?

Mr. GATES. Yes, sir, we're trying to develop some new approaches on this. It's a very delicate matter in terms of protecting their rights as Americans and their right to privacy, but to the degree we can do something about the problem consistent to the law and those peoples' rights we would like to do that.

Chairman BOREN. Senator Cohen.

Senator COHEN. Mr. Chairman. Mr. Gates, you said earlier that you were aware of Project Democracy's existence? When did you first become aware of it?

Mr. GATES. Largely as I recall several years ago, just through the newspaper accounts and also I recall a staff meeting or some meeting, the Director saying that we would not be, that he was going to provide assurances that CIA would play no role in that activity?

Senator COHEN. Did he explain what the activity was?

Mr. GATES. Well, no he did not go into any detail, but he mentioned the various programs being developed by Project Democracy.

Senator COHEN. Were you aware that it was sort of a twin of the so-called National Endowment for the Democracy? Conceived as a twin?

Mr. GATES. No, sir, not really. I guess in my mind I may have ended up confusing the two to tell you the truth.

Senator COHEN. Well I'd appreciate receiving a copy of the investigation as soon as you complete it. There was an interesting article that appeared in the New York Times last Sunday outlining some of the activities.

When you referred in answer to Senator Bradley about the piece of speculation you received from one National Intelligence Officer, again, I don't want to hit this point too hard, but this individual who was involved is a senior National Intelligence Officer. He's not some low-level functionary that you would tend to dismiss lightly. Fairly senior individual who had been working on the Iran project for nearly a year. Is that not the case?

Mr. GATES. Yes, sir. On the positive intelligence side of it.

Senator COHEN. Right. But he was very familiar with the details in terms of the positive operational aspects of the sale or transfer of arms to Iran, if not the diversion of the funds.

Mr. GATES. Well I knew that he was well aware of the intelligence reporting that we had been receiving.

Senator COHEN. So when he raised a question, that was not just merely a piece of speculation from some individual who didn't de-

serve some credence, this was a fairly important piece of information rather than some thin gruel that was being handed out.

Mr. GATES. And that is why I urged him to meet with the Director.

Senator COHEN. Earlier you indicated the initial activity of allowing the agency proprietary aircraft or airline to be used to help secure the transfer of Israeli weapons to Iran was perfectly legal without a Finding. An issue I assume that Senator Specter wants to pursue further. Is the use of agency personnel to influence foreign governments, does that require a Finding?

Mr. GATES. That would be one area in which I would go in with the presumption of a Finding depending on the judgment of counsel on the specific.

Senator COHEN. In other words, to have agency personnel call upon the heads of foreign government or counterparts in foreign government to say please allow this aircraft to land, you're seeking to influence that government's judgment as to the propriety of allowing the aircraft to land and, if the country is saying what's on the plane and then the response is, it's material for humanitarian assistance, is not agency activity being used to carry out a plan that would require a Finding?

Mr. GATES. Well, I would have to defer to our counsel on the specific judgments. It seems to me, that there are different levels of trying to influence foreign governments. Trying to influence a foreign government to take a position on a policy issue of interest to the United States to me is different than going to a friendly service and asking them to provide an overflight clearance or something like that. But I would have to have counsel review the specific event under consideration to make that determination.

Senator COHEN. The difficulty was that one seemed to believe the agency's allegations at the time, that it was simply an aircraft loaded with industrial equipment. I think it was referred to as being oil drilling equipment. I think people—reasonable minded people would have to raise the question, what kind of humanitarian assistance is involved in sending oil rigging equipment to either Israel or Iran. It might be more humanitarian to send it to Texas at this time, but I don't know that many people would give credence to sending oil equipment to Iran. It didn't have the ring of credibility and that's why the problems were raised as a result. Isn't that the case?

Mr. GATES. Well, sir, you know I've talked to some of those who were involved in making that decision and they make the case that under the circumstances and the problems that Iran was having, the equipment, described as oil field equipment of some kind and given the terms of the embargo and the attacks by the Iraqis on Iranian oil facilities and so on, their view was that it had some credibility. Again, we're looking back 15 months. To the degree that was credible at that time, I don't know.

Senator COHEN. Well, I won't pursue that one Mr. Gates. I don't think it had any credibility even at the agency where those individuals who were called upon to make the request. I think they all turned their head and said it's humanitarian, it's industrial equipment and we don't want to know any more than that.

But let me go on the Hughes-Ryan amendment. Hughes-Ryan amendment states that no funds will be expended by the CIA for covert actions unless or until the President has issued the required Finding. In your judgment can you have a retroactive ratification of an act that has taken place without the Finding. Can you ratify a prior act in the absence of a Finding?

Mr. GATES. Again, not being an attorney, I don't know the legalities. Let just say as the Director, I would never proceed on that premise.

Senator COHEN. As a matter of policy, wouldn't you agree it would be a very dangerous situation to allow an agency to undertake an action in the absence of a Finding and then put pressure upon any President, this President, a future President to be forced to make a choice as to whether to ratify an act that was unauthorized?

Mr. GATES. Yes, sir.

Senator COHEN. Wouldn't that be a very dangerous situation for this country to be in where you could theoretically or legally undertake an action and then force the President to ratify it or else embarass the agency and/or the personnel involved?

Mr. GATES. At a minimum it would be unwise for the agency to do that.

Senator COHEN. Now routinely we ask nominees a number of questions and one of the questions we asked about some of your activities and qualifications for the office and you responded as follows. You said during my tenure as Deputy Director for Intelligence, I encouraged the establishment of a new covert action review system within the CIA under which covert action proposals are reviewed by the Deputy Director for Intelligence, by appropriate experts in the Intelligence Directorate to validate premises underlying a proposal, assess the risk involved and suggest ways to make proposed activities more effective. During this same period I sat as a member of the three-person CIA panel, meaning the Executive Director, the Inspector General, and the Deputy Director for Intelligence, which semiannually reviews all CIA covert action proposals for compliance with the rules and law, quality of management and makes judgments about the efficacy of each operation. Did those institutions have any role with the Iran/Contra affair?

Mr. GATES. No, sir, as I indicated yesterday, that group was one of several safe-guarding institutions or organizations that was bypassed.

Senator COHEN. So we can have all the laws and all the rules and regulations in the institutions and if people at the higher levels choose to ignore them they can do so? Not with impunity I might add but they can do so.

Mr. GATES. Yes, sir, and I think that that is one of the important lessons that people have learned out of this affair.

Senator COHEN. You indicated, and the record is pretty clear, that you are opposed to providing or sharing any sort of intelligence with Iraq. Right?

Mr. GATES. With Iran?

Senator COHEN. With Iran, I'm sorry.

Mr. GATES. Yes, sir.

Senator COHEN. In other words, you were put in a position that we're going to provide some weapons but you felt that providing intelligence would be more inappropriate or improper than providing weapons?

Mr. GATES. I thought that it posed a more significant strategic risk in terms of the outcome of the war.

Senator COHEN. The Iraqis have claimed that the intelligence that was provided indeed has helped the Iranians in their recent skirmishes. Would you care to comment on the validity of that charge?

Mr. GATES. I think that the honest answer to that, Senator, is that we don't know. The information that was provided was fairly general, particularly the information that was provided in October, but I can't sit here and say it did not help the Iranians. No.

Senator COHEN. Can you tell us in general terms what you've learned about the relationship between CIA personnel and the private parties who may have been funding or supplying arms to the anti-Sandinista forces? What have you learned during the course of this entire matter about the role private individuals who are involved supplying arms to the Contras?

Mr. GATES. Well, we have underway our investigation of our contact of the activities of our officer in Central America who had contact with them. I have not read that investigation, it just arrived on my desk yesterday. That investigation will be made available to the Committee.

Senator COHEN. Did CIA personnel have any role in assisting Eugene Hasenfus after his arrest by the Sandinistas in Nicaragua?

Mr. GATES. Not that I am aware of.

Senator COHEN. I'd like to turn for a moment to another area of the world, namely the Soviet Union. We've had a number of difficulties with the Soviet Union in terms of espionage. The Howard case in particular, recently Lonetree, and we have the situation of our typewriters having been bugged in the Embassy and the Embassy building itself being construed as something of a technical security problem and I'd like to know what status of the investigation conducted by the Agency is with respect to the Embassy in Moscow?

Mr. GATES. Well in which we are participating, but in which other agencies are participating, the Department of State has the lead is underway. My understanding is that a final report on that is due in mid-April.

Senator COHEN. Are you confident there will be no moving into that new building until all of the security issues are satisfied?

Mr. GATES. I think that that issue is one that has to be sorted out in the Executive Branch. I know that there is concern throughout the community over occupation of the building before those security concerns have been addressed.

Senator COHEN. Let me just ask the final question. Given the need to cut back on professional personnel in Moscow because the Soviets pulled out their support people, does it make sense in your judgment to send new people to the Consulate in Kiev?

Mr. GATES. I would have to examine that more closely Senator, rather than respond off the cuff. I can reply for the record if you would like.

Senator COHEN. My time is up. I may come back just one more time.

Chairman BOREN. I would add to the comments that Senator Cohen made about the occupancy of the Embassy in Moscow and would urge that the Agency keep the Committee informed about that matter because there are very serious concerns in the Committee, on that particular issue. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. Mr. Gates, when my time expired we were talking about the issue of a Finding. I had raised the point that the facts relating to the absence of a Finding and the effort for a retroactive Finding were not included in Director Casey's testimony on November 21st, and I asked you why not, and you had responded in what I thought was not responsive to the questions, saying a Finding was not necessary. And that frankly surprised me that you said that in light of what General Counsel—then General Counsel Sporkin had done and what then Deputy Director McMahon had done. I'm sure you're familiar with the Inspector General's report which was submitted in early January and the obvious conclusion that stated therein that because of the sensitivity of the NSC initiative the normal procedures for a Finding were not followed. But the Inspector General's report makes it plain that the normal procedure was to have a Finding. Are you familiar with that factor?

Mr. GATES. Yes, sir.

Senator SPECTER. So you do now agree that the normal procedure is to have a finding on the kind of activity that which was undertaken in November of 1985?

Mr. GATES. Well Senator, you kind of got me between a rock and a hard place here in the respect that in preparing for these hearings and as we've going through the investigations of the last several months, I continue to be assured by our General Counsel that a Finding was not required for that November flight. And I have to rely on his judgment on those kinds of matters.

Senator SPECTER. Well, how can that be when the Inspector General's report flatly says that the customary practice is to obtain a Finding? And the IG's report summarizes McMahon's insistance on a Finding and Sporkin's submission of a Finding?

Mr. GATES. My understanding from the Inspector General's report was that it was the prospective likelihood of additional flights that led to the determination of the need for a Finding.

Senator SPECTER. That's not what the report says. The report talks about because of the haste necessary because of the NSC operation a Finding was not obtained in advance of the CIA activity.

Mr. GATES. Well, Senator, as I've indicated earlier and again just trying to deal with events that transpired long before I became Deputy Director, my own view is that for this kind of a request, that both more questions would need to have been asked and our people would have had to begun with the assumption that a Finding would be required and only upon guidance from Counsel that it was not required would they go forward without one. So, in terms of where I am on this issue, I think that there's not that much difference between what you're saying and what I'm saying. I'm just saying that with respect to that specific event in November of 1985, that's the judgment that our General Counsel has provided.

Senator SPECTER. Mr. Gates, there's a tremendous difference in my judgment between what you and I are saying if you sit in the confirmation proceeding and say to this Committee that a Presidential finding was not necessary for the activities undertaken by the CIA in November of 1985. It not only surprises me, it shocks me. You have the statute which requires a Finding where there are CIA funds expended——

Mr. GATES. There were no——

Senator SPECTER. Wait a minute. When you have the Executive Order—well, I'm not so sure that funds weren't expended. But it's laid to rest by Executive Order 12333 that a Finding is required in all cases where there are covert activities with the CIA. And you have on top of that the activities of Deputy Director McMahon in being frantic about the absence of a Finding and the General Council Sporkin not only moving promptly for a Finding, but undertaking a very doubtful, legal interpretation to have a Finding apply to something which has occured prior to the fact. It just surprises me, Mr. Gates, that the Acting Director of Central Intelligence Agency doesn't know that those kinds of activities require a Finding. And quite frankly, it does not satisfy me to hear you say that presumptively all sorts of related activities ought to call for a Finding, you have given an oral directive to that effect and that you're soon to have a written directive. The difficulty with that kind of an approach is that every time there is a problem, you find a new way to answer it once the problem has been disclosed. But we can't have these hearings and disclose these problems one after another and have pledges that hereafter you're going to do, you're going to follow, the rules and follow the law, where you have an important matter like this one, where the rules were not followed. And again I don't dwell and seek to press on the legalisms as to whether a Finding was required. My question went to a very different issue and that is, wasn't it necessary for the Director of CIA, Bill Casey in coming before the Intelligence Committee on November 21, 1986, and telling us about this Iran matter, to at least say it was initiated without a Finding and there was concern in the CIA that it was initiated without a Finding and we tried to correct it. That seems to me to be a major matter and its omission has not been explained to my satisfaction. That's my concern.

Mr. GATES. Well sir, not having been aware of the details surrounding that flight and the preparation of the Finding subsequent to it for prospective activities, when I gave the strategic direction for the preparation of this testimony to the General Counsel and to the clandestine service and others who were involved, I was in no position to know that something significant was being left out of the testimony and that's all I can tell you. What I can tell you is, and what I've been saying is that the Finding in terms of that historical event in November 1985 I have no basis to go on other than the guidance that the General Counsel continues to give me about that flight. What I have told you and this was not in preparation for these hearings or subsequent to these hearings but weeks ago I instructed as we were going through these investigations and the problem of that flight became clear, I issued the instruction that no such activity in the future would take place not only without the approval of the Director, but also without the presumption that a

Finding would be required. And all I can tell you is that I can't revisit what happened in November 1985. What I can tell you is that I have taken steps that I think would prevent that kind of a problem from happening again. And I took those steps well before these hearings began.

Senator SPECTER. Well Mr. Gates I consider it indispensable to focus on November 21, 1986, to see if your participation in the preparation of that testimony contained adequate disclosure in terms of the specific commitment which you made to this Committee on April 10. And whether you discharged your duties as Deputy, seems to me to bear very heavily perhaps in a determinative fashion on your qualifications to serve as Director And I only started with the Finding. I have a long list of important facts which were omitted by Director Casey in his November 21st testimony. I can't go into all of them, the Chairman wants to conclude the hearings. To take them all up would be an impossibility.

I mentioned the one as to Ghorbanifar. A critical factor, a key man, fails 2 polygraph examinations. He's the cornerstone of the CIA policy on Iran. Flunks 2 lie-detector tests and the Intelligence Committee is not told about it when the Director comes to testify. Why not?

Mr. GATES. Senator, I can't correct what I don't know. And what we have done since the 21st and the Director said in his testimony of the 21st that we were still assembling the facts, we were still trying to get the information together. In the course, as we got that information together, every single piece of information we have put together has been provided to this Committee as well as every document that we have found relating to it. We have not tried, the Director did not try on the 21st, nor have we tried at any point subsequently to shield or hold back from this Committee one piece of information about this entire affair.

Senator SPECTER. So what you're saying is you did not know that Ghorbanifar had failed 2 lie-detector tests. The centerpiece of CIA policy in Iran, and you were the Deputy Director and you didn't know that Ghorbanifar had failed 2 lie-detector tests and that there was raging controversy among McMahon and the people at the White House and McFarlane as to whether Ghorbanifar ought to be used and whether we ought to proceed on the basis of what Ghorbanifar had said. He was the link to the alleged moderates in Iran.

Mr. GATES. I knew that Ghorbanifar was mistrusted. I did not know some of the specific details.

Senator SPECTER. You didn't know he failed 2 lie-detector tests?

Mr. GATES. No, sir. I knew that he had had a problem with one polygraph.

Senator SPECTER. You knew he'd failed one polygraph?

Mr. GATES. Yes, sir.

Senator SPECTER. Well why didn't Director Casey's testimony say that? Isn't that a very, very important fact on oversight by the Intelligence Committee to have this Committee know that the CIA had proceeded with the Iran matter relying on the principal person, Ghorbanifar, who'd failed a polygraph examination? Mr. Gates, I'm looking for two things here. I'm looking for your judg-

ment on what is important, and I'm looking for your candor in what you disclosed to the Committee.

Mr. GATES. Senator, I think that we tried to put all of the information into the speech about which we were confident and about which those who were involved in the operation made the judgment that it was relevant.

Now the judgment was made by those who were preparing the speech and I read the draft, as I indicated, that the important thing was to get down some of the operational facts. If we left out an operational fact in that speech, in my judgment, it was not at all an effort, and I am confident it was not an effort to mislead or misguide this Committee but rather simply a matter of the drafting. Because I think our responsiveness subsequent to that speech—beginning with that speech, that speech began a process. And that process has included providing all of this information to the Committee.

When the Inspector General report was laid on on the 26th of November that was going to put everything we knew on the record, I was the one that said we will commit at the outset to provide the full text of that Inspector General to both of the Oversight Committees as well as the Tower Commission and the Special Counsel. If there was an omission from that speech, in my view, of one or another specific operational detail, it was not an effort to try and mislead the Committee. It was simply a matter of drafting judgment.

Senator SPECTER. Mr. Chairman. I have one more question along this line.

Chairman BOREN. When you said speech, you meant testimony? Is that right?

Mr. GATES. His testimony of the 21st.

Senator SPECTER. Mr. Chairman, I have more line on this question. The card has been waved.

Chairman BOREN. Go ahead and proceed with that final question.

Senator SPECTER. When I say I have one more line, I'm not going to go into any more facts because it would take the balance of the day and perhaps the balance of the week to go into all of what I think is important that was omitted. But in the interest of trying to expedite the hearing, I will ask one final question along this line.

And that is the issue of diversion. In going back again to your testimony on December 4th, this question by Senator Cohen, page 29 of the record, quote, "In other words, if the money was skimmed off by Khashoggi, Secord, or anybody else, or North himself, and say, 'Here we have inflated the price from $4 million to $20 million or $30 million raking off the top the money from the Iranians shipping it down to the Contras', then as far as you are concerned that does not involved the CIA in any fashion.

"Mr. GATES. Yes, sir, that would be our view."

Now was it appropriate, accurate, for Director Casey to say to this Committee on November 21st all the monies paid by the Iranians and put through the Swiss bank accounts had been properly accounted for?

Mr. GATES. I would have to look at the exact text of his testimony but I think that what the Director was saying was that all of the money paid by the Iranians to CIA had been accounted for.

Senator SPECTER. Well, it looks like Senator Cohen was right. I can't promise that was the last question. But I will desist at this point.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you, Senator Specter.

Senator Warner, do you have any questions at this time?

Senator WARNER. Thank you, Mr. Chairman. I want to look to the future in the hopes that we do have a confirmation and ask you how you propose to lead this agency and your subordinates. While I recognize you are not a lawyer, you will have to rely from time to time on the views of your General Counsel, and I'm intrigued as a lawyer and concerned about the views of Judge Sporkin. He felt that he could go back and prepare a draft Finding and have the President execute it, which would in fact justify actions by the agency which had taken place without a Finding being in existence.

Do you have any views on that? And, most particularly, would you permit such a practice in the event you become the Director?

Mr. GATES. No, sir. I think that that's a very unwise policy. Whether or not it's legal.

Senator WARNER. And therefore you would——

Mr. GATES. I would not do that.

Senator WARNER. Now, we've had a lengthy discussion on the role you played in the preparation of Mr. Casey's testimony. You refer to it as a speech, I think we refered to it as a testimony before this Committee on November 21. Again, I proceed from the point of view that you did not try, to the extent you participated, to deliberately encourage the Director or encourage those who were working on it with you to omit certain things which should have been brought to the attention of this Committee and others.

Now on that assumption, would you like to have the opportunity now to clarify why certain things may not have been included. My distinguished colleague from Pennsylvania has enumerated some of those various things: the role of Secord, the role of Ghorbanifar, and so forth. Do you want to take an opportunity now to elaborate on all of this to why? Because I just don't—I hope my assumption is correct that you did not deliberately try and suggest to anyone or, by your actions, try and omit anything. That assumption being correct, then perhaps you'd like to have an opportunity to explain why these facts were deleted. Maybe you didn't know them, maybe you thought they were insignificant.

Mr. GATES. Senator, as I have said several times this morning, my instructions at the outset to those who were preparing the testimony—and I invite the Committee to talk to them—my instructions were quite clear. We must provide all the facts that we can determine in the testimony. That the only way that we can avoid a long drawn out investigation that would be time-consuming, is if the Committee has the confidence that we are being absolutely open in presenting everything that we know. Those were the directions that I gave to those who went off and drafted the testimony.

Now, in terms of the judgment of what was or was not in the testimony and taken out by the Director as he worked over the drafts is something that frankly would have to be addressed, I think, with the people who actually participated in the drafting of the testimony. I did not. There were a lot of details I did not know. I've got a note from one of the people involved that I was probably unaware at the time of the first draft retroactive Finding at the time of the November 21 hearing. There were a lot of things I didn't know at that time.

And, as a result, my strategic guidance was as stated. I don't believe there was an attempt by any of those involved in preparing the speech to deliberately mislead or to leave information out. There was a judgment made presumably in the course of drafting about what to put in and what to leave out and all I can say is that I don't know what those judgments were.

Senator WARNER. Mr. Casey, indeed, is a unique person. And in the event that you are confirmed and become the Director, how do you wish to establish your relationship with your Deputy?

Do you intend to keep him more fully informed than you were? More fully involved so that in your absence he could, perhaps, act in your stead and in a more competent matter?

Mr. GATES. My approach when I was Deputy Director for Intelligence was that my Deputy should know what I knew. And should be able to stand in for me on most matters of any particular importance. I would continue to have that practice with my Deputy, if I were confirmed.

Senator WARNER. So it would be in somewhat sharp contrast to the practice that Mr. Casey had with respect to yourself?

Mr. GATES. Well, I think that the areas where I was not fully informed was more the result of this informal division of labor that I described rather than a conscious effort to withhold information from me. There were, in other words, people who would go to the Director with information about a particular project in which they knew he was fully informed and had the lead and had a particular interest and they would come to me with information on projects where they knew I was particularly interested.

For example, I got weekly briefings on two or three of the activities in our covert activities after I became Deputy Director. I got those briefings every week. And I am confident that I knew details about some of those operations that the Director did not. But it was not a matter of withholding information from me. It was just a matter of time in terms of managing these very large institutions.

Senator WARNER. Let me turn from my last question again to November 21. Earlier that day, I'm informed of this—I have no direct knowledge myself—I'm informed that the Chairman of this Committee and the Vice Chairman went to the White House and were briefed by Admiral Poindexter. And then later that day in the afternoon, Mr. Casey presented testimony.

The briefing in the morning, so I'm advised, tracked in many respects with what Mr. Casey said in the afternoon in that there were obvious omissions in the briefing in the morning which likewise occurred in the afternoon testimony.

Do you know of any coordination between the NSC, specifically of Mr. Poindexter and Mr. Casey in the matters in which they

dealt with the chairman and the vice chairman of this Committee and the later presentation that day of testimony?

Mr. GATES. I know that, or I believe, that drafts of the testimony—a draft—was provided to the NSC. My impression has always been that it was more in terms of part of the effort to get the facts right as opposed to coordinating a line, if you will, to take.

Senator WARNER. Thank you, Mr. Chairman.

Chairman BOREN. Senator Bradley?

Senator BRADLEY. Thank you very much, Mr. Chairman.

Mr. Gates, I'd like to go over a couple of points so that you have a chance to get the record clear on them. You mentioned, though things might have happened on the November flight, that you have now instituted a mechanism that would ensure that it wouldn't happen again. Is that right?

Mr. GATES. I have given directions to the person who runs that organization that none of his assets are to be used without the assumption being made that a Finding is required. He has to go into an operation with that assumption. If he is later told by Counsel it's not necessary, then so be it.

Senator BRADLEY. Right. So that you can't support operations without a Finding, essentially?

Is that correct?

Mr. GATES. Covert operations, yes, sir.

That's my going in assumption.

Senator BRADLEY. If one took place, would you specifically tell the Committee that you would never seek a retroactive Finding?

Mr. GATES. If one took place, I'm sorry?

Senator BRADLEY. If a CIA personnel worked in support of an operation for which there was not a Finding, when you discovered that, would you seek to place a Finding that retroactively took care of that person?

Mr. GATES. No, sir.

Senator BRADLEY. So you would specifically commit to the Committee to never support any retroactive Finding?

Mr. GATES. The only reason I'm hesitating is more a question of the statute than practice. I always hate to make a statement that says never. What I can tell you is that I do not——

Senator BRADLEY. But that goes very directly to the kind of the integrity of your own statement that you've corrected this situation, that this could never happen again. Well, it can never happen again until it happens and someone then writes a retroactive Finding. Then it's happened again.

Mr. GATES. I do not believe in retroactive Findings.

Senator BRADLEY. Is that the strongest statement you'll make?

Mr. GATES. I would like to check with our Counsel to ensure that there is some aspect of this that I'm not thinking of right now. And—unless some such comes up, I would be happy to provide within the next 24 hours a statement for the record to this Committee to the effect you just cited.

Senator BRADLEY. All right. If you could, that will be helpful.

Mr. GATES. All right.

Senator BRADLEY. From my standpoint. Now one other issue. When you recommend that the President notify the Congress, and the President says do not notify the Congress, there is a little bit of

ambivalence or contradiction in your testimony. You told us yesterday that on the one hand if this occurred, you would contemplate resigning. You and I had an exchange in which you said, well, one month seems to be a reasonable period to allow for operations such as hostage rescues, etc. In questioning from another Senator, you said, well, of course, you have to give the President the maximum flexibility and discretion and maybe possibly it would be several months—many months.

For us, would you clarify if the President told you do not report this to the Congress, how long—how long would you be willing to not report it before you would resign?

Mr. GATES. Senator, the criterion that I used when I expressed my position on this issue to Senator Bentsen yesterday morning was that the key for me would be the point of which I felt the relationship of trust between the Intelligence Oversight Committees, and the Intelligence Community would be jeopardized. Now, I admit that that leaves a judgment call in my hands. But the point is that if I felt under the circumstances of a particular operation that this Committee would understand the reasons that the President had and, in my judgment, would agree that those reasons were valid, then that would be an important consideration in my decision whether or not to resign.

Senator BRADLEY. Well, so that we're not left in this relative world, let me ask you at what point would you have resigned in the last year and a half?

Mr. GATES. Well, Senator, I think in the hypothetical situation like that, it is very difficult to answer because my judgment would have been that we should have pressed for a reversal of the decision not to notify in February 1986.

Senator BRADLEY. I'm only asking you this Bob, so that you can give the Committee the information that we would need in order to make a judgment.

I think central to this is what is the time span between when you were told not to notify and when your conscience started to bother you sufficiently that you would act.

Mr. GATES. Well, Senator, I appreciate that and what I am trying to convey is that Committee should understand that as a going in position. Well, first of all, I think it is important to remember the background that in 7 years of this law, this exception has been used only once. But beyond that, that I believe that I have committed to the Committee that I will recommend to the President against withholding prior notification under any circumstances except the most extreme involving life and death and then for only a few days—several days was my exact statement.

So that's my going in approach.

Senator BRADLEY. That's sufficient. Why don't you just leave it there.

Mr. GATES. All right.

Senator BRADLEY. Let me ask your view, as I take your response to several questions, that you have the authority to supervise the NSC if the NSC is involved in special activities pursuant to Executive Order 12333. Right?

Mr. GATES. Senator, my view is that as Director, I would not tolerate the NSC becoming involved in operational intelligence activities.

Senator BRADLEY. So you would take full responsibility for supervising any entity department, or agency of Government, including the executive branch entity, that is, the NSC, that provides direction for all special activities?

Mr. GATES. Yes, in a technical sense I would do that. But I think, again, one of the most important lessons of this affair is the danger of allowing people who are not in CIA and who do not know how to do these things to carry out these activities. I would strongly oppose any other organization being allowed to do that.

Senator BRADLEY. OK. In your interrogatories, you were asked any knowledge, directly or indirectly, of activities you've reason to believe may be unlawful or contrary to the Executive Order which have not been reported to the Intelligence Oversight Board or any activities that involved criminal law and not reported to the Attorney General. Your answer is, "I am not aware of any activities conducted by the CIA which I have reason to believe are unlawful or contrary to Executive Order". Are you aware of those conducted by any others?

Mr. GATES. No, sir.

Senator BRADLEY. Do you have a complete set of Presidential Findings that are now in effect, whether they be written or oral?

Mr. GATES. Well, I started to say, we certainly do. But you have—I have not personally addressed the question to Mr. Carlucci. I will see him tomorrow evening and I will assure for the record that there are no Findings which the agency does not have or of which we are not aware. I do not know at this point. I do not believe there are any Findings that we do not have or that are not in the possession of this Committee.

Senator BRADLEY. As Director of Central Intelligence, that would you do if you found one?

Mr. GATES. Well, the first thing I would do would be to hop in the car and come up here.

Senator BRADLEY. Well, you're learning, Mr. Gates.

Mr. GATES. Nobody ever accused me of being slow, Senator. [Laughter.]

Senator BRADLEY. Let me ask you on a slightly different subject. Could you describe to the Committee the extent to which you think the Director of Central Intelligence should become involved in policy debates, as to whether this policy is good or that policy is good?

Mr. GATES. I think that the Director of Central Intelligence should be in the position of participating in discussions and bringing to bear the intelligence that is available in those policy discussions. Sometimes it's very difficult to do that without appearing to take a position in a policy discussion. But my view is that the Director of Central Intelligence should not be an advocate in policy debates.

Senator BRADLEY. Well, how do you explain then your speech on November 25 in San Francisco on the SDI and the Soviet Union?

Mr. GATES. Senator, that speech focuses almost exclusively on the Soviet strategic defense, what the Soviets have done in the way

of creating leadership protection, their own SDI program, their own strategic antiballistic missile system and so forth.

At the very end of that speech in which I suggest that these activities give the Soviets a unilateral strategic advantage, I note that the President's initiative to try and remedy that situation seems like a smart one to me. I am not aware that the SDI program is a subject of policy debate in the Administration.

Senator BRADLEY. Well, let me ask you, is this your role as Director of Central Intelligence? It's a slightly different post than Secretary of State, or Defense, or whatever In your speech, you conclude by saying failure to proceed with an American strategic defense would "hand the Soviets a unilateral military advantage of historic consequence with awesomely negative implications for strategic stability and peace."

Now, is this your conception of your job? Are you going to be out making speeches for whatever foreign policy initiative is current at the moment? And where do you draw the line? Does your Deputy go out and make speeches? Does an analyst go out and make speeches? How politicized is the Agency going to become under your leadership?

Mr. GATES. In my judgment the Agency is not now politicized, nor would it become so under my leadership.

Senator BRADLEY. So can you give us, just for the record so that we have it, any more specific assessment of where you would draw the line between your role as Director of Central Intelligence with responsibility directly to the President on these matters, and your role as part of a political administration. I am sure you have thought about this.

Mr. GATES. In my view, the important thing is to protect the integrity of the intelligence that is being provided to the policy community and to the Congress, and to ensure that that intelligence is as objective as we possibly can make it. In the same way that when our analysts go out and talk on college campuses to classes or other officials of the Intelligence Community give speeches, because we are an official, it seems to me that we shouldn't be totally bereft of having our own judgments and opinions on things. But I think it is an obligation to identify it as a personal point of view.

Senator BRADLEY. OK. But, is that where you would draw the line? You would go out and make any speech on any subject as long as you identified it as a personal point of view, even though you are the Director. Is that where you would draw the line?

Mr. GATES. I would want to be very cautious and prudent about doing that. The basic point in that speech, it seems to me, that you cited, was putting before people information that has not been widely circulated about what the Soviets are doing. That was the purpose of the speech, and I think that that is not inappropriate.

Senator BRADLEY. I have gotten the magic green card, so I appreciate the Chairman's forebearance, but I thought this was an important subject to at least allow Mr. Gates to share with us.

Thank you, Mr. Gates.

Chairman BOREN. Thank you, Senator Bradley.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. Mr. Gates, you have made your professional career within the CIA with the excep-

tion of the timeframe that you were with the National Security Council. Can you give us, for the record, perhaps a few reflections on your relationship with Mr. Casey? There are a lot of professionals of competency in the service, yet you are here today to replace Mr. Casey. Obviously that nomination by the President is a significant one, recognizing your capabilities and your contribution. But somewhere along the way I assume it became known that you might be a possible successor, or be groomed for succession, or taken out of the ranks and given additional responsibility which you had as Deputy. And is it fair to say that it is generally known that you were handpicked by Mr. Casey, or how does the process within the CIA hierarchy generally follow. I know that there are those that have held that post as Director that have not had a career in the CIA, but you have evolved up to the point where you were career, and now your name is being submitted to us for confirmation. Can you tell us a little bit how you perceive your evolution and your relationship with Mr. Casey in that regard as to succession within the CIA?

Mr. GATES. Senator Murkowski, when Mr. Casey arrived at the Agency in January 1981, I had not met him before. In fact, it was only when his Deputy was named and arrived that I became acquainted with Mr. Casey beyond just the routine performance of my duties at that time as the National Intelligence Officer for the Soviet Union. I had known Admiral Inman during the time he was the Director of the National Security Agency, and I believe that it was a combination of a friend of Mr. Casey's who was working with him—a retired officer—and the good offices of Admiral Inman that I was named as Director of the Executive Staff.

It was during that period of nearly a year in which the Director and I developed a fairly close relationship professionally, and I think largely through a common understanding or a common view of the international situation—particularly with respect to the Soviet Union. We worked very closely together. I gave Mr. Casey what I regarded and I think what he regarded very candid advice.

You know, I have seen some of these things in the press about pleasing various bosses. It is worth noting that sycophants only reach generally in this town to a certain level. There is an ample supply and they only go so far. The fact is that among senior people in this town, those who rise to very senior positions of responsibility, that they understand that the most dangerous thing in the world to have around you is a yesman. And I believe that Mr. Casey, like some of the people that I had worked before, such as Dr. Brzezinski and others felt that the candor with which I approached them was a valuable asset. I think the other thing that Mr. Casey found—both Mr. Casey and Admiral Inman found useful was that I had some very specific ideas on how to improve the analytical process, a very specific agenda of measures that I thought should be taken. And I believe it was a joint decision of both Admiral Inman and Mr. Casey to appoint me as Deputy Director for Intelligence.

Senator MURKOWSKI. So you were Mr. Casey's right hand. Policy was made within—appropriate policy within the CIA. I assume you had differences with Mr. Casey from time to time. When you differed, can you indicate for the record if his policy prevailed and

you simply carried out his policy in most cases when you did obviously have a few instances of disagreement?

Mr. GATES. I won some and I lost some.

Senator MURKOWSKI. All right. Let's assume that you lost some on policy matters, so it would be Mr. Casey's policy that would prevail, and you would carry out that policy.

Mr. GATES. Yes, sir.

Senator MURKOWSKI. I think some of my colleagues have perhaps been their own bosses too long to recognize the relationship that has to exist between a Director and his assistant or an extension of his right arm, so to speak. I assume in order to take any other action than simply disagree with the formation of policy, you would have had to take some extreme action, such as saying to Mr. Casey, I feel so strongly about this policy issue I am going to resign, if indeed you could not prevail in appealing to Mr. Casey to listen to your particular point of view. Somebody has to bear the responsibility, right.

Mr. GATES. Correct.

Senator MURKOWSKI. And during the time that Mr. Casey was Director of the CIA, that responsibility was basically Mr. Casey's was it not?

Mr. GATES. Yes, sir.

Senator MURKOWSKI. And you had the obligation of a working relationship between a Director and an Assistant Director, and sometimes I assume you had a fine line to maintain your own—at least occasionally I can foresee circumstances where Mr. Casey would indicate that this was the way it was going to be and he was prepared to accept the responsibility.

I note a good deal of my colleagues' deliberation has been based on what you would do if, and I think that is most appropriate because you are up for consideration and we are interested in knowing how you would react under situations. We have heard what you would do if you got in a situation where you felt that you had to compromise your principles; you would resign. And I think that is appropriate. But to suggest that you have to indicate to what degree, that is very difficult unless you are involved in the circumstances and have to go through the agonization of making those decisions.

I am curious, though, and since we are saying what if, a good deal of concern has been expressed about the issue of withholding information. And you have related to that extensively and you have indicated what you would do under the circumstances and what counsel had advised you, and you, I think, acknowledged yesterday that that the time element was far too long, that you felt it was unreasonable, and you know, we still have that concern of, well, why didn't you take the initiative and go ahead and notify the Committee. But I think as we reflect on that, we have to recognize the relationship that the Director was responsible. If somebody has to bear the responsibility of that decision, it is the Director who dictates policy to you, the Deputy Director. And I think it is a bit unfair to dwell at great length on why you didn't spontaneously come before this Committee or both Committees with that, because that realistically isn't done in the real world of getting along with

a Director. You have to obviously be concerned with your own principles and I think you enunciated that.

But Mr. Gates, on the issue of both notification and on the issue of preparing Mr. Casey's testimony, I assume that Mr. Casey had to decide what he wanted to say in his testimony, and it is up to this Committee to hold Mr. Casey responsible for what he said. We have the unique circumstances of his untimely illness, but if Mr. Casey were here, one has to wonder if he indeed would take—bear the entire responsibility for the manner in which notification was not done adequately to this Committee, or would he say, well, you know, that was a joint decision made among my staff with the input of my Deputy.

Would you respond to that generalization of what you think Mr. Casey would say if he were before this Committee? And after all, an awful lot of our discussion has been on what if, so why not add one more what if. What if Mr. Casey was here and I said, Mr. Casey, do you bear the sole responsibility for not notifying the Intelligence Committee in a manner that we would expect within a reasonable timeframe. What do you think he would say?

Mr. GATES. Knowing Bill Casey, I believe he would accept that responsibility.

Senator MURKOWSKI. And would he accept the responsibility for his testimony, or would he say, now, look, this testimony wasn't representative truly of the true sense of timeliness and concern over its totality?

Mr. GATES. I believe he would accept responsibility.

Senator MURKOWSKI. So without shunning a responsibility, the relationship is truly one of a Director and his aide and obviously you are going to have to do a good deal of what you are told or you are not going to be the Director, somebody else is, because Bill Casey makes the policy. Is that right?

Mr. GATES. Yes, sir.

Senator MURKOWSKI. Thank you. Thank you, Mr. Gates.

Chairman BOREN. Mr. Gates, I want to ask just one question again and I'll return to Senator Specter. We are going to try to complete with Senator Specter's round of questions, and then with a final statement from Senator Cohen. So we are going to attempt then to complete this part of the hearings.

Let me go back just very briefly again to the question of whether or not in the opinion of counsel, your opinion in terms of the advice that you receive now, as I understand your earlier answer you said that when you have simply a proprietary type activity, normal course of business activity for a proprietary, it would not be your view that that would necessarily require a Finding. Is that correct?

Mr. GATES. That is correct.

Chairman BOREN. Now obviously what happened in November of 1985, we, during the flight or after the fact, determined that that turned out not to be a normal proprietary activity. So I assume that after it was determined that weapons were onboard, there was a realization then—a realization on your part that a Finding would have been appropriate in that situation.

Mr. GATES. That was Mr. McMahon's judgment at the time, I believe.

Chairman BOREN. Yes. And would you share that judgment, after it was learned that these were weapons that were on board?

Mr. GATES. Yes, sir.

Chairman BOREN. Now, in regard to obtaining flight clearance and contacting other governments for overflight privileges and the rest, landing rights, the Agency would not normally be involved in that course of action in simple proprietary business-like transactions, would it?

Mr. GATES. No, sir. My understanding is the only reason those activities were undertaken was because the plane was flying in to what could be regarded as dangerous circumstances, an effort to try and protect the plane rather than advance its operational capability.

Chairman BOREN. I understand. It is my understanding of your answers earlier that in regard to whether or not—I think this becomes important—I think there is an understanding that if you are dealing with a purely proprietary type activity, that a Finding—it is purely a business-type transaction that is not related to carrying out a covert operation of any kind would not necessarily require a Finding.

Mr. GATES. No, sir.

Chairman BOREN. But if the Agency is involved in making contacts with other governments, for landing rights or otherwise, that is an area that might hypothetically require a Finding, right?

Mr. GATES. That would be one of those circumstances in which I would have our people presume that a Finding was required until demonstrated otherwise.

Chairman BOREN. You would presume that a Finding would be required.

Mr. GATES. Yes, sir.

Chairman BOREN. I would like for you to submit for the record any advice on that particular point, as a general principle, as to whether or not a Finding would be required in those kinds of situations where contacts are made with foreign governments that would not normally be made in just a proprietary business-type relationship; whether or not, as a general matter, that should require a Finding of some kind.

Mr. GATES. I will provide that for the record.

Chairman BOREN. Thank you. Senator Specter.

Senator SPECTER. Mr. Gates, I had ended on the question about whether it was any of the CIA's business if there had been an inflated price from $4 million to $20 million or $30 million and it had been raked off the top and shipped down to the Contras and whether that would have been any concern of the CIA in any fashion, and you said no, it wouldn't.

Isn't it true that the Inspector General's report has found certain surplus which has been concluded to be the property of the U.S. Treasury, not to have any fiddling around with it?

Mr. GATES. Yes, sir.

Senator SPECTER. Well, if the surplus belongs to the U.S. Government, why wouldn't it be relevant to the CIA not to see money skimmed off the top and sent down to the Contras?

Mr. GATES. The money that is surplus is money remaining after the billing of the agency by the Department of Defense within the

specific account. I must say, Senator, with respect to my testimony on the 4th again with little if any time to prepare, I would have to say that with having had the time to reflect upon it, that if information had come into our hands of specific and large sums of money that were being skimmed off, that would have been something that I think at first at least should have been reported to the NSC. And if we determined that something illicit were going on, informed to the Attorney General or if appropriate to these Committees.

Senator SPECTER. Well all right, let's close it off for the purpose of trying to move ahead and finish up in fairly short order.

So far as your view at the present time is concerned, that if there was a surplus, if the U.S. arms sold to Iran had produced a surplus, that money belonged to the U.S. Treasury, not to be sent some place else?

Mr. GATES. I don't want to try and parse this too finely, but I'm just trying to make clear that the surplus of $300,000 plus was out of the moneys that were deposited in our account and left over after the payments were made to the Department of Defense.

Senator SPECTER. Yes, well, these were monies paid by Iran for the arms shipment. There was a surplus that was in your account and its your view that that money belongs to the U.S. Treasury?

Mr. GATES. Yes, sir.

Senator SPECTER. Yesterday we had a fair sized discussion about the testimony you have given and it was pursued earlier today. I just want to come back to it for one more minute. Because you raise an issue that you might have been confused with some of the activities that were going on in Central America as to what North had said to you. In the context of your testimony, you were testifying exclusively about the Iranian arms sale back on December 4, and the testimony right before you mentioned North and the money for the Contras involves the Iranian transaction, and the lines immediately preceding were, I don't remember who initiated it precisely, however, but there was a discussion of Ghorbanifar's financial disarray, the problems he was having, and Ghorbanifar had nothing to do with Central America, did he?

Mr. GATES. No, sir.

Senator SPECTER. And after you mentioned Ghorbanifar's financial disarray and the problems he was having, your testimony of December 4 says "North then made a very cryptic reference to the Swiss bank account and money for the Contras." Now isn't it really most reasonable that that reference was to Iranian arms sale and not to Central America and not to Hasenfus?

Mr. GATES. I think, Senator, we went ahead in that same context, I went ahead and I testified about North's comments to the effect in terms of CIA's involvement in the funding of the Contras—the part of the benefactor funding—that the CIA was completely clean. Again, I had little time to prepare the testimony. I was testifying without notes or prepared text. And when I testified only a week later to the House Committee on this same issue, I testified more fully in the context of that conversation that it had taken place in the discussion of Central America.

Senator SPECTER. Mr. Gates, on the issue as whether the November 21 testimony should have included the matter of diversion of

funds, I think you testified yesterday that you might have discussed that with Director Casey.

Do you recall whether or not you did discuss with Director Casey, whether his November 21st testimony should have included the issue of the diversion of the funds?

Mr. GATES. I just do not, Senator.

I could talk to those who were involved in the preparation of the testimony and find out if it was discussed.

Senator SPECTER. Well, here again, Mr. Gates, I don't hold you responsible for what the Director did. But what I think you are responsible for is your role in the preparation of the testimony and your commitment to this Committee to tell this Committee what was important, and whether there was an omission of a really important fact. But in the context, we have gone over this to some extent and I won't belabor it considering the hour. You had the November 1st Allen briefing of you. You had the meeting where Casey was startled as you had been startled on October 1. You had the session with North on the 9th. you thought it important enough to go and see White House officials and Admiral Poindexter. You have the Furmark remark to Mr. Casey about the diversion of funds to Central America, perhaps not on the 7th but at least on October 22d. And here again are those 2 issues—the issue of your judgment as to whether there was something that ought to have been told to this Committee, and with judgment and candor you still say that was a matter that was properly omitted in terms of informing this Committee about the issue—at least potential issue—of diversion of funds to the Contras from the Iranian arms sale.

Mr. GATES. Senator, when that testimony was put together on the 21st, before the 21st as I have testified several times, the only piece of information that I felt I had was the National Intelligence Officer's comments to me on the first of October. I did not place the context of the North comment on the 9th in the context of a diversion or having to do with Iran. And I was unaware of the remark the New York businessman had made on the 22d to the effect that some of the money had been earmarked for Central America. Again, in the context that was something that Iranian intermediary believed. So the only piece of information that I had during that period was the speculation that I had gotten almost 7 weeks before. And during that period, in having our own General Counsel look it over in bringing it to the attention of the National Security Council, no additional information had come to my attention. And in my view, that was too flimsy evidence or information to bring to the Committee at that point. If I had known about the New York businessman's comments on October 22—again, as I explained yesterday, the fact that it was sourced to the Iranian intermediary and given his mixed motives—I'm not even sure if I had known that, that that would have been worth bringing into the testimony on the 21st.

Senator SPECTER. Now Senator Bradley has characterized it throughout as a passing of the buck to Admiral Poindexter. Admiral Poindexter never said to you that there was nothing to it. Your General Counsel never said to you there's nothing to it. You had made those reports and nobody had given you a conclusion and

there was no factual basis to it, you just decided not to tell this Committee.

Mr. GATES. Sir, I made the judgment that the information that I had was too flimsy to bring to the attention of the Committee.

Senator SPECTER. Mr. Gates, when you testify about people in Washington don't want yes men, did you ever say to Director Casey I think the policy about Iran is wrong, the sale of arms to Iran is wrong?

Mr. GATES. Yes, sir.

Senator SPECTER. When did you tell him that?

Mr. GATES. I don't remember specific occasions but we had several discussions about it during the course of the summer of 1986.

Senator SPECTER. Didn't you testify before this Committee that you never said that to anybody?

Mr. GATES. I don't believe so, sir.

Senator SPECTER. Page 64 of your testimony—Mr. McMahon, did you at anytime ever advise anyone higher than you in the organization of the agency or the White House that that was a bad policy that should be changed. I think it's fair that's the Iranian arms sale. Mr. Gates: Apart from raising concerns about the implications of it for our relationship with the Committees in a general sense, no.

Mr. GATES. Well, sir, then again given the limited time that I had to prepare and I don't have any documentation for it, but I do recall sitting and in fact preparing for these hearings, the NIO reminded me of a meeting we had in September as an example when the additional two Americans were kidnapped at which point I told the Director that I thought the entire activity should be called off—that the whole policy was a bad idea. So I know at least on that one occasion for which I had some corroboration that that was the case. And I misspoke in my testimony on the 4th in talking only about expressing my concerns with respect to prior notification. But I was reminded about that only in the course of preparing for these hearings.

Senator SPECTER. Mr. Gates, you testified that you thought Congress should have been informed of the Iranian arms sales about February 1986.

Mr. GATES. Yes, sir.

Senator SPECTER. Did you ever tell Director Casey that you thought Congress—the Intelligence Committee—should be so informed?

Mr. GATES. Apart from this was one of the things that I indicated yesterday that in terms of my personal role was one of my principal regrets and one of the errors that I made, apart from discussing with the Director the general cost to our relationship with the Committees, I never did insist to him that we have the White House review the policy and I should have.

Senator SPECTER. Aside from insisting, did you ever suggest it to him?

Mr. GATES. I think that it was implicit in my comments to him about the cost to the Committees, sir. Cost to our relationship with the Committees.

Senator SPECTER. So something that's just implicit and not even said directly.

Mr. GATES. Well, I can't remember the conversations precisely but I'm willing to live with that description.

Senator SPECTER. You testified earlier that you have access to the President and that you have been so assured in your capacity of Director of the Central Intelligence Agency.

Mr. GATES. Yes, sir.

Senator SPECTER. Have you so far had meetings with him alone?

Mr. GATES. I have had one meeting with him. I've had a number of other meetings in the company of others.

Senator SPECTER. Have you ever had occasion to discuss with the President your views about your responsibility to inform the Intelligence Committee about covert activities within the course of a few days in terms that you testified before this Committee?

Mr. GATES. No, sir, I have not discussed that with the President directly but I have discussed it with the Chief of Staff and also with the President's Counsel.

Senator SPECTER. Thank you very much, Mr. Chairman.

Chairman BOREN. Did the President assure you directly in your conversation with the President that you would have access to him if you felt the need to have such access?

Mr. GATES. Yes, sir.

Chairman BOREN. So that assurance came not from some other person, not from the Chief of Staff but directly from the President himself?

Mr. GATES. That is correct.

Chairman BOREN. Senator Cohen.

Senator COHEN. Mr. Chairman, I just have a brief comment to make about this entire procedure. This is one of the few times that this Committee has held a public hearing and I hope it will be the last time that the Intelligence Committee has to hold a public hearing. But I do think it has been beneficial to you, Mr. Gates. I know it has been beneficial to the Committee. And ultimately I think it has been beneficial to the country. I was reminded of this yesterday at the conclusion of the meeting—the long meeting—that we had. There was an Australian television journalist over in the corner. When the meeting ended, he came rushing over to Senator Boren and me, and he hit us with a couple of questions—one reasonable and one offensive. The reasonable one was, do you trust the Central Intelligence Agency, yes or no? My response was that I presumed that our Government will obey and abide by the law. It is a rebuttable presumption. That is why we have oversight jurisdiction on this Committee to ensure as best we can that this agency, which must necessarily function in the dark, must also function within the law.

The second question was a bit more offensive to me. He said, are you ashamed of your Government now? I said the question was offensive—I put it off largely to his pique over the Stars and Stripes victory down under. And I struggled for an answer for it. I said, as a matter of fact, I'm rather proud of this country because we are unique, unique in all the world. There is no other country—not our British or French or Italian or German or Israeli friends—there's no other country, even in the free world, not to mention the Soviet Union and the totalitarian side of the globe, no other country that can undertake this kind of self-examination or self-criticism or ex-

ploration—and do so in front of the glare of these lights or the notepads of our representatives from the press. I know that I've received mail on this subject matter, I've read a lot of editorials about it.

Some people in this country and especially abroad, see this as a weakness—this capacity for self-criticism to descend into self-flagellation and ultimately political paralysis. I think there's always that danger. But I also see this exercise as being a healthy one, a reasonable and responsible and even public inquiry into breaches of rules that we find intolerable. And I think what it does is reaffirms that we're different—that we are, in fact, different. We expect a different standard, because the rule of law really does have meaning to us.

I don't intend to make any commentary about a program that is running on one network now—a mini or maxi series, depending upon your endurance level. But for me, there is no greater representation of this difference than in how we celebrate May Day—May 1—which is coming up fairly soon. We call it Law Day. We gather a group of new citizens before a Federal judge, and they take the oath to uphold the Constitution. And what we are saying to them at that particular point is that they are now enjoying the full privileges of living in a free society. I always contrast that with what is taking place on the other side of the world—where they celebrate the same day, calling it May Day, by rolling tanks and armored personnel carriers and missiles down through Red Square, followed by goose-stepping soldiers. And I think what it does—it's a stark polarization—but it reaffirms that ours is the rule of law and theirs is the law of rule. That's why this particular proceeding is so important.

That's why it's perhaps difficult for us to tell people, not only our constituents but people in other countries, why we are making such a big fuss over what is seemingly trivial to them. It's not so much this particular issue, whether you agree about the military equipment going to Iran, which is a serious matter in my judgment, or whether funds were diverted to the Contras—it's the issue about the adherence to the rule of law. Because if we ignore, or we tolerate, breaches in the rule and procedures that are sanctioned by or embedded in the law, then if we short-circuit or amputate these rules, even though we're pursuing a well-meaning and noble goal, what it does is undermine the glue that cements our citizens to the Constitution and to the rule of law itself. And that's why these hearings have been public, that's why they've been important. There has been no new information gathered—we knew basically what you were going to testify to based upon our hearings in closed session. But I think it has been an important exercise to reaffirm not only to you, to the Agency, but to the President, the Presidency, all of our institutions, that we take this very seriously. Because if we're going to insist that citizens abide by these rules, we've got to have adherence at the top as well. So, once again, I hope we won't have another public session in the Intelligence Committee. Frankly, I think you probably share that same view that we should continue to function in private with confidentiality and, I hope, consistent with the rule of law in the future.

Chairman BOREN. Thank you for those comments, Senator Cohen. I certainly associate myself with them; I think particularly in the areas in which we must operate, and we understand that because of national security interest, we have to operate very often under a cloak of secrecy. But it's important to have open hearings such as these which do affirm, even in those areas of activity, we must operate within the bounds of accepted, legal and constitutional behavior. And that we are committed to it. And I think that the public exposure of the process that we intend to follow, even in those areas which demand total and complete secrecy for reasons for national security, we are going to follow those standards. We are going to follow the law. We are going to follow the constitutional process.

I hope that through this process that we've followed in these hearings, we've done a couple of other important things. As I said in the beginning, the United States is being severely damaged in the eyes of the rest of the world by what I've called a stop-and-start foreign policy. We're not able to have continuity in our foreign policy because of a breakdown frankly of the old-fashioned concept of bipartisanship and because of a breakdown of the concept of the partnership between the Executive branch and congressional branch in the making of policy. And so our allies around the world can no longer always rely upon us. They don't know whether or not we will continue to follow our policy from one week to the next, a policy with which we have sought their aid and help. So they are afraid to follow us because they're afraid that we may reverse directions. They have also learned unfortunately to play one political party off against another, one branch of government off against another, in seeking their own national advantage because we've failed to be united and to speak with one voice as Americans to the rest of the world in terms of our own national interest.

There is only one way to rebuild that sense of consensus, that sense of continuity in our foreign policy, and that is to have total and complete mutual trust between the branches of Government.

If you are confirmed as Director of the Central Intelligence Agency, you are going to be occupying a position of extreme sensitivity in that relationship. I think in your answers to the Committee during this confirmation process and your candid acknowledgement of some of the mistakes that have been made in the past, principally your expression of regret that you did not push harder with all of those involved who were your superiors to make them aware of your strong feeling, great damage could be done to the national interests of this country by breaching a relationship of trust and partnership between the two branches of Government as we try to develop one foreign policy for this country.

I commend you for your candor in acknowledging your mistakes and in saying that you have learned from this experience and that it has given you an even stronger feeling that this kind of bond must be fostered and this kind of commitment must be kept. That's a responsibility that we all have.

The process that we have gone through the last 2 days has been a very vigorous process, tough questions have been asked. I think that, too, is to the benefit of the country particularly under the circumstances in which we meet. We have a very strong obligation to

the rest of our colleagues in the Senate and to the country to be thorough, careful in this confirmation process for a position of such great importance in our Government.

I also think it will be constructive from the point of view of the future service of the Director of the Central Intelligence Agency. If it is the decision of Committee and it becomes the decision of the Senate that you are confirmed to that position, I believe that a careful process and a thorough process during this period of considering your nomination will better enable you to fulfill that responsibility if it is indeed entrusted to you in the future.

So I think what we've been through in the last 2 days has been a healthy process. The process will in essence continue over the next several days. Some members of the Committee have indicated to me that it is very likely that they may want to address some additional questions that would require discussion of classified information. And so it is my plan to have at least one closed meeting of the Committee, probably not this next week but the following week, for the consideration of any questions which members may have at that time that are classified in nature. There is always the opportunity, of course, to reopen the public hearings if any reason arises between now and that time for doing so. We do plan to follow the general rule of proceeding through at least the minimum of the fourteen day period which is set forth in our rules for consideration of a nomination between the time the Committee receives that nomination until the final vote on the confirmation recommendation as taken by the Committee.

And I would say to you again this is no reflection, certainly no negative reflection on the part of the Committee that we intend to follow this process. We intend to follow it simply because we feel a very heavy responsibility to make sure that we have a process that is as thorough and as careful and as fair as it possibly can be.

I want to express my appreciation to you again for your patience and you have certainly set endurance records for the amount of time that you have been here at the witness table before us. We appreciate your full participation in the process and the candid way in which you have responded to our questions. There may well be some additional questions that Members will want to submit in writing to you for inclusion in the record.

If there are no further matters, the hearings will stand in recess at the call of the Chair.

[Whereupon, at 1:39 p.m., the hearing was recessed, subject to the call of the Chair.]

○

70-566 (192)